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IN THE TRIAL COURTS FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT
AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs

JOSEPH HAZELWOOD,

Defendant.

FILED
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Appeals Divisi

No. 3AN 89-7217; 3AN 89-7218

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BEFORE THE HONORABLE KARL JOHNSTONE
Superior Court Judge

Anchorage, Alaska
March 23, 1990
8:39 a.m.

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1 PROCEEDINGS

2 FEBRUARY 23, 1990

3 (Tape: C-3637)

4 (1527)

5 (July present)

6 THE COURT: Resume Trooper Fox testimony.
7 You're still under oath, sir.

8 Trooper Fox resumes witness stand.

9 MICHAEL FOX

10 recalled as a witness, having previously been sworn,
11 upon oath, testified as follows:

12 MS. HENRY: Your Honor, at this time I was
13 going to be playing the tape and I was going to request
14 that a transcript be provided to the jury. Would you
15 like a court exhibit on the transcript?

16 THE COURT: Yes. Have it marked for
17 identification.

18 MR. MADSON: Your Honor, I would object to the
19 passing out of a transcript. It seems to me the tape
20 is quite clear. It's audible. And I don't know what
21 possible assistance a transcript might have. And it
22 could have errors in it. And likely to confuse rather
23 than help assist the jury. I don't think it's
24 necessary.

25 THE COURT: Testimony was that there's been a

1 couple errors. And I'll give the same instruction to
2 the jury I did with the other transcript.

3 Your objection's overruled.

4 Ladies and gentlemen, Ms. Henry will pass you
5 a transcript. When you're finished with it, return it
6 to the front counter.

7 The instructions I give you for this
8 transcript are similar to the ones I gave you for the
9 earlier transcript.

10 The transcript is not evidence. It's what you
11 hear is evidence. Now, if there's any deviation
12 between what you hear, any variance between what you
13 hear and what you read, disregard what you read.

14 If what you hear, for example, is
15 unintelligible, but there's a word for it on the
16 transcript, disregard that word. Even though it would
17 seemingly explain what you hear, it's what you hear is
18 the evidence and not what you read.

19 You can pass them.

20 (Pause)

21 THE COURT: May I see a copy? It was marked?

22 THE CLERK: This is Exhibit 4.

23 THE COURT: This is going to be Court's
24 Exhibit 4, Mr. Madson, for the record.

25 MS. HENRY: May I proceed with playing the

1 tape now?

2 THE COURT: Yes, you may. And has the tape
3 been admitted into evidence?

4 MS. HENRY: Your Honor, I thought I moved
5 yesterday for it. If I did not, I'd move at this time.
6 It's Exhibit 102.

7 THE CLERK: Not shown.

8 MS. HENRY: I'd move it into evidence, Exhibit
9 102.

10 THE CLERK: Oh, it is in.

11 THE COURT: Is in? Okay.

12 Before you play it.

13 (1644)

14 (Bench conference)

15 THE COURT: Is any dispute where it says JH
16 that it will be Joseph Hazelwood throughout? Is there
17 a genuine dispute about that?

18 MR. MADSON: Oh, I don't believe so.

19 THE COURT: Okay, I won't...

20 (1655)

21 (Tape played)

22 THE COURT: I didn't hear you. But turn it
23 off. Turn it off.

24 (1706)

25 (Tape stopped)

1 MS. HENRY: Your Honor, I have some concerns
2 with the audio. Perhaps we should put it back by the
3 witness ...

4 THE COURT: Well, you can take the microphone
5 off.

6 (Pause)

7 THE COURT: Ladies and gentlemen, I want to
8 emphasize my instructions at this time. It's what you
9 hear is evidence. What you read on that document is
10 not evidence. So keep that in mind as you listen to
11 this tape.

12 And, wherever you can listen and not read,
13 make the best effort to listen and not read.

14 (1750)

15 (Tape played)

16 (3428)

17 THE COURT: Just pass them up to the front,
18 please.

19 (Pause)

20 MS. HENRY: I have no further questions, Your
21 Honor.

22 (3477)

23 CROSS EXAMINATION OF TROOPER FOX

24 BY MR. MADSON:

25 Q Trooper Fox. It is Trooper Fox, is it not?

1 A Yes.

2 Q And your name is Michael J. Fox?

3 A Correct.

4 Q Well, sir, let's go back to the past for a
5 while, if we can here, and ask you some questions
6 about March 23rd.

7 And I think you said in your direct
8 examination that you had gotten in quite late
9 from Cordova and obviously went right to bed.

10 A No. I arrived on the ferry at about 10:30 at
11 the dock. Hitched a ride home from a guy that
12 was on the ferry there. I actually walked in the
13 door about 11:00.

14 Q Well, what time did you go to bed then, sir?

15 A About mid-night.

16 Q And I think you said you got a call at about
17 2:30? 2:20?

18 A 2:20.

19 Q You were asleep?

20 A Yes.

21 Q And at that time who spoke to you?

22 A I believe it was Chief Peterson (ph) of the
23 Coast Guard Marine Safety Office in Valdez.

24 Q Did you know Mr. Peterson?

25 A Yes, I know Mr. Peterson.

1 Q So you recognize his voice?

2 A Yes.

3 Q And you know it wasn't Captain McCall.

4 A Yes.

5 Q And what did he tell you?

6 A He told me that the ship was aground on Bligh
7 Reef and that there was an oil spill.

8 Q And that's all he knew at that time,
9 basically?

10 A That's about all, yeah.

11 Q Yeah, you said, well, you know, you asked him,
12 says is there anything I can do? Right?

13 A Well, yeah. I repeat -- I asked him to repeat
14 it several times. And usually I would have
15 expected to have something go along with it, like
16 they're on fire or they lost power and drifted
17 ashore or something like that.

18 They're aground because of something. And he
19 never had a because of something. So I asked
20 him...

21 Q You didn't know the reason?

22 A Right. So I asked him to repeat it several
23 times to try to get a better picture of what he
24 was tellin' me.

25 Q He called you because you're on a list of

people to call whenever there's a...

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A notification list.

A what?

A notification list.

What is that notification list

I don't know. It's their list.

It's the Coast Guard's list?

Yes.

Well, they didn't call you because it was Michael Fox, State Troopers, because you were kind of standing in for Mr. Alexander, the other trooper. Is that right?

When they called, I'm not sure if they called me because I was the Division of Fish and Wildlife or if it was because of the state troopers.

I know that Trooper Alexander was out of town. And so I knew I was the only public safety person there. So, I knew that I should pass it on through the public safety command, which is the troopers' dispatch.

Well, I guess what I'm trying to get at is, they may have called you because you're in the fish and wildlife part of the state troopers as opposed to the law enforcement part, right?

1 A May have.

2 Q But at that time, no matter what, they
3 wouldn't ask you for your assistance as a law
4 enforcement officer. They were just telling you
5 what happened.

6 (3666)

7 A They were just telling me, yes.

8 Q And you, evidently after the call was
9 completed, did you try to go back to sleep? Or,
10 did you go back to sleep?

11 A Well, I called 'em right back again.

12 Q And asked?

13 A Was there a public safety hazard? Was there a
14 fire? Was there risk of injury to anybody? The
15 village of Tatitlek is nearby there and I'd have
16 to be concerned if there was a fire or something
17 heading towards that village. Or, you know, it
18 seemed like a pretty big event and I ought to
19 find out a little more of the details.

20 Q I guess though you didn't find any more
21 details?

22 A No. They said everything was pretty normal.
23 Just hard aground; leaking oil.

24 Q Hard aground, leaking oil, and that's all that
25 was the matter.

1 A That was it. Yeah.

2 Q So, did you then go back to bed?

3 A Well, I was still in bed. My phone's right
4 there by the bed.

5 Q So, it was about 2 hours later then, about
6 4:30, when the second call came from...

7 A Right.

8 Q ...Mr. Peterson?

9 Again, Mr. Peterson?

10 A I believe it was. I can't really say for
11 sure. But I think Mr. Peterson had gotten me on
12 the line and sort of held me for Commander
13 McCall. And I don't think Commander McCall
14 actually dialed me right up. But Commander
15 McCall passed the message to me.

16 Q So then you spoke directly with McCall?

17 A I believe so.

18 Q And, now, you didn't take any notes of that
19 conversation at 4:30 in the morning I presume?

20 A No. Not right then, no.

21 Q Can you say for sure that Commander McCall did
22 not ask you at that time to get some blood test
23 kits or something out to the Exxon Valdez?

24 A No. He didn't say to bring a blood testing
25 kit.

1 Q Well, you were informed, were you not, that
2 somehow there was something said that there's
3 supposed to be a drunk captain on board the Exxon
4 Valdez? That's the message that you got.

5 A They wanted a trooper out there right now.
6 Yeah.

7 Q You subsequently learned that this message got
8 garbled somehow between whoever sent it from the
9 Exxon Valdez to the Coast Guard station to McCall
10 to you. Because that isn't what happened.
11 Right?

12 A I not sure what the question is.
13 But, when I got to the bridge, Falkenstein
14 asked me where is the blood sampling stuff and I
15 didn't know what he was talking about.

16 Q That's my question. So, somehow, if he made
17 that request back to the shore to the VTC Center,
18 and McCall's on the phone and called you, somehow
19 that message didn't get through, right?

20 A I would say yes, yeah.

21 Q Because you said, in your direct examination
22 that you got the impression that there was a
23 drunk captain that you had to go help subdue.

24 A Right.

25 Q Now, did McCall ask you anything about a

1 portable Breathalyzer or anything like that?
2 A No.
3 Q Breath test kit?
4 A No. Before I left I called the police
5 department and told them that I may be bringing
6 some people in for alcohol sampling. To be
7 ready. Because I was under the impression that I
8 would get the people. Take them off the tanker.
9 Bring them in to town where we would go through a
10 normal drunk driving thing.
11 Q You said them. Were you talking about more
12 than one you were going to bring back now at this
13 time?
14 A Well, whoever, you know?
15 Q Okay.
16 A One or more. Whatever.
17 Q Your understanding, your state of mind at that
18 time, was that there was one individual that you
19 had to go and physically subdue...
20 A Right.
21 Q ...right?
22 A Right.
23 Q And you thought that the Tom had called, the
24 Tom that relayed the message was not Tom
25 Falkenstein?

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1 A I thought it was Tom McCurdy of the DEC who
2 was not even there.

3 Q Who was not where?

4 A He wasn't on the boat.

5 Q But you didn't know that?

6 A No. I thought, when they said Tom, they meant
7 Tom with DEC, not Tom with the Coast Guard.

8 Q Did that strike you at all strange that Tom
9 McCurdy, I think you said his name was, would be
10 called you for assistance?

11 A Well, actually, that made the most sense to me
12 because the DEC people are responsible for oil
13 spill pollution in the state of Alaska. And they
14 go to every oil spill that there is at the
15 terminal. And Tom McCurdy would be the senior
16 person when Dan Lawn is out of town, which I
17 thought he was still out of town, as he was on
18 the previous oil spill over at the terminal a few
19 weeks before that.

20 (3958)

21 So, when they told me Tom needed help with
22 this problem, I thought he meant Tom of the DEC.
23 I never imagined that the coast guard couldn't
24 handle their own problem.

25 Q Coast guard couldn't handle the problem

1 themselves, right?

2 A Right.

3 Q And had to call you.

4 A I would have been surprised if he said coast
5 guard was asking for me, yeah.

6 Q In any event, then you must have got up, got
7 dressed, put your uniform on, right?

8 A Right.

9 Q Side arm?

10 A Yeah.

11 Q Weapon?

12 A Right.

13 Q How about some kind of club or something to,
14 you know,...

15 A No, I had...

16 Q ...to knock the drunks on the head?

17 A I had my uniform, my gun, my hand cuffs, and
18 my notebook.

19 Q And your what?

20 A My notebook.

21 I had left my truck at the airport when I flew
22 to Cordova. I got in on the ferry, which is
23 several miles from the airport, so I came
24 directly home. And in my truck is my stick and
25 my cameras and all those things.

1 Q So you didn't take your stick or camera.

2 A No. I thought it'd be, from the way they were
3 talking, I figured it'd be best just to get there
4 as quick as I could and not worry about that
5 other stuff; the time it would take me to recover
6 that.

7 Q I take it you must have had some thoughts
8 going through your mind at this time that this is
9 no way to start a morning or something. Going
10 out there to probably wrestle somebody.

11 A Probably pretty surprised that the ship was
12 there, yeah. So it was very unusual.

13 Q And unusual for you to be going out this far
14 to have to subdue somebody or bring back?

15 A Oh, not that so much. We go to the village.
16 We go to -- I've driven to Glennallen and over
17 night with cold weather, my head out the window
18 trying to stay awake. I've done all kinds of
19 crazy calls.

20 Q So, this was no crazier than normal?

21 A Well, it's just another one.

22 Q Any way, you got there, right? I think you
23 said you got a...

24 A Yeah.

25 Q ..."somebody took you out there in a boat."

1 A Coast guard boat, yes.

2 Q Were they waiting for you?

3 A Yes.

4 Q When you got there? So, somebody was
5 expecting you to come to the...

6 A Yeah.

7 Q ...dock there, right?

8 A There was a couple of crew members and myself
9 actually pulled into the parking lot right at the
10 same time. And there was a couple a more guys
11 already on the boat and we just kind a took right
12 off.

13 Q Did you have any conversation with them; just
14 say, you know, what's going on? You know, what's
15 happening?

16 A No. It was pretty obvious they didn't know
17 much either.

18 Q So, you got out to the ship, the Exxon Valdez,
19 and you explained that it was difficult getting
20 up there because of the oil on the starboard side
21 and you had to go around to the port side, right?

22 A Exactly.

23 Q And got up the ladder. Went to the bridge.
24 And, low and behold, there was no rant and raving
25 drunk up there, right?

1 A Right.

2 Q And did you see Falkenstein and Delozier up
3 there?

4 A Yes.

5 Q And you say, well, you know, what do you want?

6 A Yeah. I was ready to go. Nothing' was there.

7 Q And nothing was there. The atmosphere was
8 very subdued, very quiet, repressive.

9 A Silent, yeah.

10 Q This was about 6:45 a.m. you said?

11 A I got along side 6:45 and I was on deck at
12 7:05. It took a few minutes to walk up to the
13 bridge.

14 Q And I think you said, well, I don't know if
15 you said or not, but would you agree then it was
16 kind of a helpless feeling or situation? You
17 know? Everybody sitting there. There's nothing
18 much you can do.

19 A Well, I tell ya, you see that much oil in the
20 water, I mean, you knew, man, this was a big
21 problem.

22 Q And there isn't much you could do about it at
23 the moment, correct?

24 A Everyone was just kind a stunned, I think.

25 Q Your just setting there looking at it?

1 A Yeah.

2 Q And it was obvious, wasn't it? I mean, that's
3 an understatement of the century perhaps.

4 A Well, it was real obvious to me.

5 Q So, then you saw Mr. Falkenstein and he said
6 something about, well, where's the blood kit or
7 something like that?

8 A Yeah.

9 Q And you must have responded, what are you
10 talking about?

11 A I said I don't draw blood.

12 Q Did Mr. Falkenstein act upset or did he say,
13 well, why are you here or something then?

14 (0070)

15 A No. He said, let's solve the problem. Let's
16 move along here and we'll take these guys to town
17 and take blood samples. Get somebody out here to
18 do it.

19 Q So, you discussed that with him at that time?

20 A Sure.

21 Q And Mr. Delozier too?

22 A Yeah.

23 Q And you were certainly there to help in any
24 way you could, right?

25 A Well, I...

1 Q Or, were you doing the investigation? I mean,
2 who was doing...

3 (Tape: C-3638)

4 (0003)

5 A No. Well, that was one of the first things we
6 established. You know? If I had probable cause
7 to arrest somebody, then I would have arrested
8 them and taken them to town and that would have
9 been it.

10 And I said, well, you know, I don't have the
11 probable cause here to...

12 Q Well, let me ask you about that. You say
13 probable cause. That means you have to have some
14 kind of reasonable belief that a person has
15 committed a crime and you can then arrest them?

16 A Sure.

17 Q And, if it's a drunk driving or something like
18 that, you have to have some observable things to
19 look...

20 A Some evidence.

21 Q ...at in that individual, right?

22 A Right.

23 Q And from what you learned, you didn't have
24 that.

25 A I didn't feel I had enough and the coast guard

1 said that they didn't either.

2
3 They said they could take blood sample just
4 because of the accident. And I said, well, if --
5 I asked them, I said, are you a hundred percent
6 sure that you can legally do this? Otherwise, I
7 will go through the state's avenues. I will
8 launch an investigation right here and now and
9 we'll do it the state way. Search warrants...

10 Q What was the state way?

11 A Well, search warrant, for one thing. You get
12 the captain up and get some blood out of him.
13 And that type of an investigation.

14 But I said, are you a hundred percent sure
15 that you can take blood out of these guys? And
16 they said, yes, we can. I said, well, fine.
17 Let's do it.

18 Q So you were agreeable to help do it the coast
19 guard way because...

20 A Right.

21 Q ...that was the most expedient and that's what
22 they wanted to do, right?

23 A Right.

24 Q And you were certainly there to assist in any
25 way you could as a state...

1 A Right.

2 Q Well, in that respect, did you tell them that
3 you knew of people right there in Valdez that you
4 could get on board to draw the blood because you
5 couldn't?

6 A Sure. We talked about how we're gonna do it.

7 Q Did you tell them individuals? I mean, who
8 you could use?

9 A Well, they would run off to the phone, one of
10 the coast guard guys would go to the phone, and
11 talk to the office and try to get somebody out
12 there.

13 Q And this was at 7:00 o'clock or thereabouts?

14 A Yeah. It started right away.

15 Q And right away you informed them, hey, I know
16 people we can get out here.

17 A Sure. We all knew that. We all live there
18 and we know there's three doctors and nurses and
19 EMT-3's.

20 Q Did they tell you then why they didn't want to
21 use the people you suggested?

22 A No, but I kept asking 'em.

23 Q They never told you?

24 A No. They'd go back to the phone and talk on
25 the phone some more and come back.

1 Q Did you feel that you were maybe getting a
2 little ignored at this point?

3 A Well, it was their investigation, so you kind
4 a do the best you can.

5 Q Yeah, and in doing that, you're trying to
6 offer services that appear to be not accepted.

7 A Well, you reach a point where, if it's their
8 thing, then they've got to do it. And there's no
9 sense, you know, getting in any kind of argument
10 or fighting about it. I knew they were trying to
11 get somebody out there. And I knew I told 'em
12 all that I could tell 'em. And, it's just time
13 to let them do their job.

14 Q So, anyway, did they tell you why then that
15 they didn't want to take anybody from the boat to
16 shore to have a breath test done?

17 (0133)

18 MS. HENRY: Objection. Hearsay.

19 MR. MADSON: What?

20 MS. HENRY: Hearsay.

21 MR. MADSON: Well, Your Honor, on direct he's
22 gone into every conversation with every person on this
23 vessel. I think I can certainly, since the door's
24 open, ask him the same questions about who he's talking
25 to and what was said.

1 THE COURT: Objection sustained.

2 MR. MADSON: Your Honor, I would also say
3 that, it isn't for the purpose of the truth of what was
4 said, but simply to show what the gentleman did as a
5 result of the conversation.

6 THE COURT: Objection sustained.

7 Q (Trooper Fox by Mr. Madson:) Then, Trooper
8 Fox, after having conversation with him, and
9 evidently these people did not come out from the
10 shore that you suggested, right?

11 A A coast guard medic came out.

12 Q And when did he arrive?

13 A I don't know when he arrived. They told me
14 that he arrived. It was after Gregory Cousins'
15 interview I found out he was there.

16 He had arrived and had started doing' his
17 sampling before I even knew he was there.

18 Q Well, you've got, like in three hours here,
19 from the time you got on board and this was
20 discussed til that hour, what did you do in this
21 three hour period?

22 A Well, we -- the first block of time we just
23 sort of decided what we were gonna do. And then
24 we moved on to the interviews of Mr. Kagan. And
25 then I had a brief conversation with the captain.

1 Q Let me stop you right here. What was that
2 time, when you had that brief conversation?
3 A That was at 8:30.
4 Q So, we understand, when you got on board at
5 around 7:00, no one directed you to go right to
6 the captain's quarters or anything like that?
7 A Well, no one was directing anything.
8 Q Well, no one asked you to go see the captain
9 right away?
10 A No.
11 Q In fact, you were told he was in his cabin,
12 right?
13 A Told he was in bed. In his cabin.
14 Q Well, do you know if he was in bed or not?
15 A Do I know that?
16 Q Yeah.
17 A I didn't go look, no.
18 Q Oh, you didn't peek in his door and see if he
19 was in bed or not, right?
20 A No.
21 Q You just knew he was in his quarters?
22 A Yes.
23 Q So, when you saw him, about what time was
24 that?
25 A 8:30.

1 Q Okay. And that was the time you saw him in
2 the passage way?
3 A Well, it was either on the bridge or right out
4 side the bridge in the companionway.
5 Q And were you with anybody at the time?
6 A There were other people around, yeah.
7 Q Do you remember who else was there?
8 A No, I can't say.
9 Q Now, you said at that time, you kind a came up
10 and said, -- did you introduce yourself at that
11 time?
12 A Yes, I did.
13 Q Said who you were and you're there helping
14 them with the state for an investigation?
15 A Right.
16 Q And you said something like, well, you know,
17 what's the problem here?
18 A Yeah.
19 Q And he said, well, you're looking at it.
20 Right?
21 A (Inaudible response.)
22 Q Did he gesture at all with his hands or did he
23 just stand there when he made his comment?
24 A I can't remember that.
25 Q Trooper Fox, as you indicated earlier, when

1 you got there, the situation was pretty obvious.
2 There's a ship hard aground on a reef with oil
3 coming out of it. Right?
4 A Right.
5 Q Would you say the comment, you're looking at
6 it, may have been one that was designed or spoken
7 to communicate with you that the problem is
8 obvious? You're looking at it?
9 A No, because...
10 MS. HENRY: Objection. Speculation.
11 THE COURT: Don't answer the question.
12 Q (Trooper Fox by Mr. Madson:) Well, you don't
13 know what was in the captain's mind when he said
14 that, correct?
15 A No. I don't know what was in his mind.
16 Q Where were you going when you said you met him
17 in the entry way?
18 A I believe we were going to find Gregory
19 Cousins to interview him.
20 Q The interview sequence or who was going to be
21 interviewed first was determined by the coast
22 guard and not yourself, right?
23 A Yes. Mark Delozier.
24 Q You told Mr. Delozier that you would certainly
25 want to be present or wanted to be present to

1 assist at interviews?

2 A I sort of asked him. You know? Would you
3 like me to be there and help you form questions.
4 You know? Listen.

5 Q Did he indicate one way or the other?

6 A He said, sure.

7 Q Who was interviewed first? Mr. Kagan?

8 A Mr. Kagan, yeah.

9 Q Were you there for his entire interview?

10 A No.

11 Q It's a fact, is it not, that Mr. Delozier
12 started that interview with Mr. Kagan before you
13 got there?

14 A Yes, that's true.

15 Q He didn't wait for you to show up?

16 A He started before I got there.

17 Q Did Mr. Delozier have a tape recorder with
18 him?

19 A No.

20 Q Did you?

21 A I borrowed from the DEC officer.

22 Q Mr. Lawn?

23 A Dan Lawn.

24 Q And so, did you tell Mr. Delozier you had a
25 tape recorder?

1 A Mr. Lawn offered it to Mr. Delozier and he
2 said he didn't want it. And I said I'll take it.
3 Q Because you wanted it?
4 A Yeah.
5 Q You thought it'd be a valuable tool, right?
6 A Yes.
7 Q Extra resource to have to preserve a
8 conversation, right?
9 A Just like that. Yeah.
10 Q But that's the only one you got?
11 A Yes.
12 Q Why?
13 A Because Delozier didn't want to interview
14 Mr. -- record Mr. Cousins.
15 Q Did he tell you why?
16 A No.
17 Q How about Mr. Kagan? That one wasn't
18 recorded?
19 A Didn't have the tape recorder before that.
20 Because after Mr. Kagan's I said to him, aren't
21 you tape recording these? And Mr. Delozier said
22 no. I said, gee, probably should.
23 Q But you were there then for part of Kagan's
24 interview and then all of Cousins' interview?
25 A Yes.

1 Q And, obviously, you were there for all of
2 Captain Hazelwood's interview?

3 A Yes.

4 Q And part of that, however, the tail end of it
5 is cut off or erased over or something happened
6 to the end of that tape, right?

7 A Well, the tape is a two sided cassette tape.
8 And the first side ran out when we were talking
9 about lightering and what was going to happen on
10 salvage on the vessel.

11 That interview was actually over. We were
12 talking about what we were gonna do as far as
13 securing the other ship along side. And I was
14 gonna get a helicopter to fly back to town. That
15 sort of thing.

16 So the interview actually ended on the
17 transcript before the last page. You can see we
18 were done.

19 Q On that last point. You said you were getting
20 a helicopter.

21 You had access to a helicopter to come out to
22 the ship?

23 A Well, while we were there and this lightering
24 and all that were taking place, the oil
25 companies, I assume it was, began bringing out

1 big sections of pipe and people. You know?
2 Workers and stuff.

3 So, there were helicopters starting to come
4 and go sometime around noon, I'd guess. They
5 were coming out full and going back empty. So I
6 just rode back.

7 Q But it wasn't until about noon or thereabouts
8 when they started coming?

9 A It was after -- it was later in the day. I
10 couldn't tell you what time, but there was quite
11 a bit of activity on the deck there. Helicopters
12 and equipment.

13 Q What I was getting at was, if you had access
14 to a helicopter say, when you first got on board,
15 if you wanted to take somebody back for a breath
16 test or something like that, did you have access
17 to a helicopter at that time?

18 A None had been there yet I don't think. I
19 don't know. But I'm sure, if I would have wanted
20 to, if I wanted to, I could have gotten one.

21 Q Getting back to your short meeting with
22 Captain Hazelwood in the passageway about 8:30...

23 A Yes.

24 Q ...when you spoke to him. That conversation
25 confirmed your original suspicion, did it not,

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that there was no probable cause to arrest
Captain Hazelwood for being intoxicated?

A Yes.

Q In other words, you saw no signs of
intoxication.

A No.

Q The tape that you made here is interrupted a
couple of times, or at least once, about somebody
coming about fenders and things like that.

Captain Hazelwood was still in command of the
ship, was he not?

A Yes.

Q No one told you that he'd been relieved or
anything like that?

A It was obvious he was still the captain.

Q He was giving orders and commands and taking
control.

A He was on the phone a lot.

Q And then, again, at the time of the interview,
what time was that, sir?

A Captain Hazelwood's interview?

Q Yes.

A 1:05, I think.

Q 1:05 in the afternoon?

A Yes.

1 Q Okay. Let's go back, again, to let's say
2 about 11:00 o'clock. Were you present when blood
3 samples were drawn from the crew members?

4 A I saw the lady crew member, I believe her name
5 was Maureen Jones. I saw her blood and urine
6 sample taken.

7 Q And you were aware that this coast guard
8 corpsman had come on board for the purpose of
9 taking blood samples?

10 A Yes.

11 Q Did you talk to him at all?

12 A Yes.

13 Q Did you advise him of anything you
14 particularly wanted?

15 A Well, I saw that she was sitting at the
16 captain's desk when he did the sampling and he
17 had a urine sample there from her.

18 And then he was packing it up. They come in a
19 styrofoam pack about this big with a seal that
20 goes around it.

21 And, when he was done with her, I was watching
22 how he was doing' it because I knew it would be
23 evidence. And he put a sticker, a label on it, a
24 seal around the package and signed it and dated
25 it and put the time on there.

1 And I couldn't see what he was writing on
2 there, so I went over and I said, how you doing'
3 this? Are you following good procedure here to
4 secure this as evidence. And he showed me what
5 he was doing'.

6 And I said, okay. Have you done that to all
7 of 'em? And he said, yeah. And I said, okay.
8 That looks real good.

9 Q So, you were making sure that, for state
10 purposes, this evidence was going to be sealed
11 and taken care of properly, right?

12 A I made sure that it was not a haphazard
13 operation.

14 Q I guess I may have missed it, but were you
15 actually present then, at any time, when Captain
16 Hazelwood's blood was drawn or urine sample was
17 taken?

18 (0530)

19 A I didn't see. I just saw the girl get
20 sampled.

21 Q Did you also talk to Delozier or Falkenstein
22 about what method they were using or how they
23 were taking care of the samples?

24 A I asked them what happened to the samples and
25 they said the medic would take them back. And

1 the medic was already gone then, so he'd, you
2 know, taken them back.

3 Q You wanted to find out where they were going
4 or what they were going to do with them?

5 A Well, it's just a basic rule of investigation.
6 You keep track of evidence, yeah.

7 Q Because you might want to use it and get it
8 later, right?

9 A No. It was you secure the integrity of it.

10 Q Yeah, but I mean, you might want to have
11 access to it later. You want to find out where
12 it's going. What they're going to do with it.
13 Right?

14 A Well, I don't really understand the question.

15 Q Well, I guess I'm saying is, what good would
16 it know how they're taken care of if you don't
17 ever want to see it again or be involved with it
18 again?

19 A Oh, I knew it was going to be an issue again.
20 So, you'd want it to be a valid issue or a valid
21 piece of evidence.

22 Q Have you done this before as a state trooper?
23 Taken blood samples? Not personally taken the
24 sample, but had them done?

25 A Once.

1 Q What did you do with that sample?
2 A I say, once on humans.
3 Q Okay. Once on a human.
4 A Yeah.
5 Q What did you do with the human sample of
6 blood?
7 A I took it from the nurse who drew it and
8 sealed it up and mailed it to our crime lab.
9 Q And you made sure that it was sealed properly
10 and it was, in other words, sent by mail or
11 something?
12 A Yes.
13 Q Done the proper way, right?
14 A Yes.
15 Q And you were more or less trying to make sure
16 the same thing was done with the coast guard's
17 samples, right?
18 A Trying to keep the chain of custody good,
19 yeah.
20 Q Then, I guess if I understand your testimony
21 correct, there's a gap in time here from the
22 24th. The left the ship on the 24th sometime?
23 A I believe it was around 2:30. I arrived in
24 town around 3:00 o'clock, so I -- it takes a
25 while to get down on the deck to where the

1 helicopter is and they make you put this stuff
2 on, float stuff and ear things and what not.
3 So, I believe I took off from the ship around
4 2:30 and arrived in town around 3:00.
5 Q But you returned to the ship on April the...
6 A Second.
7 Q Second. What was the purpose of you going out
8 there on April 2nd?
9 (0621)
10 A My assignment was to search for documents that
11 could have been destroyed or thrown away in the
12 trash and alcohol containers or alcohol evidence
13 of alcohol use in the captain's suite and in the
14 garbage and the trash.
15 And then there was other people. They were
16 looking at the navigation equipment and the
17 vessel logs and a whole series of things that I
18 wasn't involved in.
19 Q Well, let's see. I'm trying to do a little
20 calculation here and I may be a little long, but
21 it looks like this is a week plus two days; nine
22 days later after the...
23 A No. It was April 2nd. I remember that one.
24 Q So it was at least a week later, right.
25 A (Inaudible response.)

1 Q And you have no idea who'd been on board or
2 who had done what in that time?
3 A Well, there's a lot of people on board.
4 Q Yeah, that's right. But you don't know what
5 happened on that vessel when you weren't there.
6 Who was throwing trash away. Or who was doing
7 anything. Right?
8 A Well, it was a salvage operation with a bunch
9 of people living and working on the boat. Yes.
10 But I don't know what. Who was there.
11 Individuals I don't know.
12 Q But you went through all the trash?
13 A Yes, we did.
14 Q Must have been interesting jobs.
15 A Fill this room.
16 Q And after going through all that trash, I
17 guess you didn't find anything of significance.
18 A No alcohol and I believe we saved a few
19 documents. But I don't know what their value
20 was.
21 Q And you went through the captain's quarters at
22 that time, right?
23 A Yes.
24 Q You had a search warrant this time, didn't
25 you?

1 A Yes.

2 Q And you basically went through everything at
3 that time and didn't find anything except this
4 Moussy beer. Is that when you took the beer, by
5 the way?

6 A The full bottles?

7 Q Yes.

8 A No. I took the full bottles on the same --
9 the 24th.

10 Q Well, were there some empty bottles that you
11 took also?

12 A On April 2nd they asked us to count up and
13 save empty bottles of Moussy. We did that.

14 Q How many empty bottles did you find?

15 A Boy, there was a lot of 'em. I don't
16 remember. I'll just take a guess. Over a
17 hundred.

18 Q A hundred empty Moussy bottles. Did you save
19 all those?

20 A Yeah. We gave 'em to the district attorney.
21 He wanted 'em, so we gave 'em to him.

22 Q Do you know where they are now?

23 A No. I -- we didn't want to save 'em. He did.

24 Q Were you familiar at all with this Moussy beer
25 prior to the time you took the full bottles?

1 A Never heard of it.

2 Q So you don't know what classification the
3 state of Alaska may consider it? Whether it's
4 alcoholic or non-alcoholic?

5 A Don't know about it.

6 Q While you were on the Exxon Valdez, you were
7 there, certainly, in the captain's quarters,
8 right?

9 A Yes.

10 Q And you come out of his quarters into the
11 passageway, is there a door that leads directly
12 to a deck?

13 A You come out of his room and it's right on a
14 very narrow companionway. You turn left forward
15 in a companionway that goes up through a door and
16 up some stairs to the bridge. And that same
17 companionway has other halls and quarters off of
18 it. Directly across from it is the radio
19 officer's room.

20 Q But my question...

21 A And I don't really know if there's a -- it's
22 an in -- it's not a bulkhead companionway. It's
23 inside the ship. So any door would have to be on
24 another companionway.

25 Q So you don't know if there's a door directly

1 out of his quarters that goes right on to a deck?

2 A There's a window in there. But I didn't look
3 outside of his window.

4 Q If you don't know, sir, you know, I don't need
5 you to speculate. If you'd just say you don't
6 know.

7 A In his room or outside his room?

8 Q No, no. As you leave the room, I say. Into
9 the companionway. Out of his quarters...

10 A In a companionway?

11 Q ...a door at that point that leads directly
12 outside?

13 A No there isn't. The companionway is inboard
14 of the bulkhead of the ship. It's like an inner
15 companionway. So there couldn't be a door right
16 there to the outside because it's inside the
17 ship.

18 Q Okay. I don't believe I have any other
19 questions. Thank you.

20 REDIRECT EXAMINATION OF TROOPER FOX

21 BY MS. HENRY:

22 Q Trooper Fox, the first time you saw Captain
23 Hazelwood and you indicated that you saw no signs
24 of impairment, what time was that?

25 A The first time I saw him?

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Q Yes.

A 8:30.

Q In the morning?

A Yes.

MS. HENRY: I have no other questions.

MR. MADSON: I have no other questions.

THE COURT: May the witness be excused?

MR. MADSON: I would think so. Yes, Your Honor.

MS. HENRY: Yes, Your Honor.

THE COURT: You're excused.

(0800)

MS. HENRY: The state will call Joe LeBeau.

MS. HENRY: Would you step forward, sir.

THE CLERK: Sir, you'll find a microphone on the counter. If you'd please attach that to your tie or to the collar of your jacket. Remain standing and raise your right hand.

(Oath administered)

A I do.

JOSEPH P. LeBEAU

called as a witness in behalf of plaintiff, being first duly sworn upon oath, testified as follows:

THE CLERK: Please be seated. Sir, would you please state your full name and then spell your last

1 name?

2 A My name is Joseph Paul LeBeau, L-e-B-e-a-u.

3 THE CLERK: And your current mailing address,
4 sir?

5 A My work address is, care of the Alaska
6 Department of Environmental Conservation, Post
7 Office Box 871064, Wasilla, Alaska 99687.

8 THE CLERK: And your current occupation, sir?

9 A I am employed by the Alaska Department of
10 Environmental Conservation as an environmental
11 field officer 3.

12 THE CLERK: Thank you.

13 THE COURT: Ms. Henry, we'll be taking a break
14 around 10:00 o'clock.

15 MS. HENRY: All right. Thank you, Your Honor.
16 (0907)

17 DIRECT EXAMINATION OF MR. LeBEAU

18 BY MS. HENRY:

19 Q Mr. LeBeau, how long have you worked for the
20 Department of Environmental Conservation?

21 A Approximately 13 years. Fourteen years.

22 Q Fourteen years?

23 A Fourteen years.

24 Q And can you tell us where you've been assigned
25 during those fourteen years?

1 A Initially, I was assigned -- I started working
2 for the department in 1976 in Valdez. And I
3 remained there until January of 1979. And from
4 March of 1979 until the present, I've been
5 working in Wasilla.

6 Q So on the day of the Exxon Valdez grounding,
7 you were living in Wasilla?

8 A That's correct.

9 Q How is that you were notified of the
10 grounding?

11 A Mr. Lamoreaux called me at approximately 1:30
12 in the morning on March 24th.

13 Q Who's Mr. Lamoreaux?

14 A Mr. Lamoreaux is the regional supervisor for
15 the southcentral region for the Department of
16 Environmental Conservation.

17 Q Did he request you to go to Valdez?

18 A Yes, he did.

19 Q Did you leave shortly thereafter?

20 A I put together some clothes and had to wash
21 some clothes. And I left Wasilla at
22 approximately 4:30 in the morning from the
23 office.

24 I went to the office and collected some
25 equipment to take to Valdez. And I took in Mr.

1 McKean (ph) with me as well.

2 Q Who is he?

3 A Mr. McKean is an environmental field officer
4 who works for the department in Wasilla. And we
5 went to Valdez at that time.

6 Q Did you drive or did you fly?

7 A We drove by state vehicle. We left at 4:30
8 and arrived at about ten minutes after 9:00 in
9 Valdez.

10 (Pause)

11 Q Sir, when you got to Valdez, at some point did
12 you actually board the Exxon Valdez?

13 A Yes. I believe I -- we flew out by float
14 plane from Valdez with Valdez Aero Services. I
15 boarded the Exxon Valdez. I boarded around 11:30
16 in the morning.

17 Q Now, as part of your responsibilities, did you
18 assist other investigators in ceasing documents
19 on the Exxon Valdez?

20 A Yes, I did.

21 Q And in particular, did you assist a state
22 trooper, Trooper Dial (ph) in ceasing some
23 documents?

24 A Yes, I did.

25 (1040)

1 Q Sir, I'm showing you what's been marked as
2 Plaintiff's Exhibit 105 for identification.
3 Would you please identify that exhibit?
4 A This is an oil record book; marked Exhibit
5 105. This came from the Exxon Valdez.
6 Q And was that ceased when you were assisting
7 Trooper Dial?
8 A Yes, I believe it was.
9 Q Do you remember what day that was?
10 A I believe that was in May.
11 Q So it was a long time after the grounding?
12 A Yes.
13 Q And to the best of your knowledge was a copy
14 made of the original?
15 A Yes. There was a copy made of the original on
16 the vessel.
17 Q And Exhibit 105, is that a true and correct
18 copy of the original, as best you recall?
19 A Yes, I believe it is.
20 Q You had a chance to look at that before you
21 came into court today, is that correct?
22 A Yes, I did.
23 MS. HENRY: At this time the state would move
24 into evidence Exhibit 105.
25 MR. MADSON: Well, where's the original is my

1 question?

2 Q Do you know where the original is, sir?

3 A I believe the original was left with the
4 vessel.

5 MR. MADSON: Could I just ask a few questions,
6 Your Honor, you know, Voir Dire, before I decide to
7 object or not?

8 THE COURT: Well, do you have a genuine
9 dispute with the authenticity of this copy?

10 MR. MADSON: Well, Your Honor, I don't know.
11 I just saw this for the first time today.

12 THE COURT: Objection overruled. And if there
13 is an objection, it's admitted.

14 (1080)

15 EXHIBIT 105 ADMITTED

16 MS. HENRY: Thank you.

17 Q (Mr. LeBeau by Ms. Henry:) Do you see some
18 numbers at the bottom of this document?

19 A Yes.

20 Q They appear to be stamped numbers.

21 A Yes, they do.

22 Q Do you know what those numbers mean?

23 A No, I do not.

24 Q During the time that you were in Valdez, did
25 you and other members of the Department of

1 Environmental Conservation track or monitor the
2 movement of the oil in Prince William Sound?

3 A Yes, we did.

4 Q And can you tell us the method in which you
5 did that?

6 A Yes. We flew out and over flew the oil.
7 Marked on the chart. Drew on the chart, the
8 nautical chart, the location of the oil. And
9 that chart was returned to the Environmental
10 Conservation office in Valdez.

11 Subsequently, there was a map produced. The
12 charts had been digitized on a digitizing tablet
13 and then stored in the computer.

14 The information that was drawn on the charts
15 was then also transferred into the computer and
16 the computer produced some oil spill tracking
17 maps.

18 There were different individuals who flew the
19 flights. And each individual who flew the flight
20 had an individual chart or map on which they
21 could draw their location of the oil for the oil
22 spill tracking.

23 Q And weather permitting, did you try to fly
24 every day or twice a day?

25 A Yes. The department tried to fly as often as

1 possible, when it was safe to do so.

2 Q Now, for the first couple of days, did you
3 only use one plane?

4 A I'm not sure about the first couple of days.
5 I knew that the first day we only had a few
6 aircraft in the area. I spent the first two
7 days, I believe, on the oil tanker.

8 Q All right. Now, specifically, a plane would
9 fly over the spill. And there would be someone,
10 other than the pilot, that would actually be
11 looking at the spill?

12 A Yes. There could be as many as three people.
13 in the aircraft. On March 24th, there was the
14 pilot, Mr. Lockwood, Mr. Sautner (ph), and myself
15 in the aircraft.

16 Q And who are Mr. Lockwood and Mr. Sautner?

17 A Mr. Lockwood is an environmental field officer
18 with the Department of Environmental
19 Conservation. Mr. Sautner is also an
20 environmental field officer with the Department
21 of Environmental Conservation.

22 Q And then one of you would have, what, a
23 navigation chart?

24 A Yes.

25 Q And what, exactly, would happen?

1 A We would go ahead and draw the location of the
2 oil onto the navigation chart. And then that
3 navigation chart would be brought back to Valdez
4 and entered into the computer system.

5 Q Did the person who was drawing on these charts
6 try to distinguish between heavy oil, sheening...

7 A Yes, they did.

8 Q ...and other types of substance?

9 A Yes, they did.

10 Q And what types of substances did they
11 distinguish between?

12 A Well, there was oil. Heavy oil, sheen, moose,
13 and light oil concentrations.

14 Q All right. What is moose?

15 A Moose is a water and oil emulsification. Very
16 similar to a dessert like moose, chocolate moose
17 or that sort of thing.

18 Q It's been...

19 A It's thickened. It has, because of wind and
20 wave action, the oil has become very different in
21 character from its original state. Physical
22 properties: it's very thick and very viscous.
23 Very similar to a chocolate moose.

24 Q Now, the persons that drew on the charts, were
25 these persons all DEC employees?

1 A There were some individuals, I believe, who
2 drew on charts who were employees of the
3 Environmental Protection Agency.

4 Q And then these charts then were fed into a
5 computer, is that correct?

6 A Yes, they were.

7 Q And then the computer printed out...

8 A Yes.

9 Q ...what? What did the computer print out?

10 A They would generate a daily map or possibly a
11 twice daily map that would combine all the charts
12 that had been brought back to the department.

13 THE COURT: Why don't we take our recess now
14 while counsel is reviewing that.

15 MS. HENRY: That'll be fine, Your Honor.

16 THE COURT: We'll take our break, ladies and
17 gentlemen.

18 (1291)

19 Remember not to discuss this matter among
20 yourselves or with any other person and not to form or
21 express any opinions.

22 Is there anything we need to take up, counsel?

23 MR. COLE: Well, Judge, at some point, yes, we
24 would like to take something up.

25 THE COURT: Okay. We'll do that right now.

1 You folks can start your break now.

2 (Jury not present)

3 THE COURT: Mr. Cole?

4 (1320)

5 MR. COLE: Judge, I want to bring to the
6 Court's attention a little problem that we're having in
7 this case and that happens to be the defense attorneys'
8 cooperation with the experts.

9 We gave Mr. Madson a letter yesterday asking
10 him to give us the phone numbers of the experts that
11 their numbers are unlisted. And he wrote back on the
12 memo, we're not talking.

13 We talked to Mr. Chalos. We've attempted to
14 contact some of their experts. Mr. Chalos told Mr.
15 Adams yesterday to quit calling their experts.

16 I can quote you a conversation that Mr. Madson
17 had, apparently with a newspaper yesterday, which says
18 that he has found an expert who says the work of the
19 NTSB is nonsense. He is quoted as saying, I don't want
20 to tell anybody yet in case we have to use him as an
21 expert. I don't want the state contacting him.

22 Now, that's a direct quote out of the
23 newspaper.

24 I know Mr. Madson knows what the criminal
25 rules in Alaska are. And they're found in Criminal

1 Rule 16. He's been an attorney in this state for many
2 years.

3 I'm not sure how they do things in New York.
4 But in Alaska,...

5 THE COURT: Let's not be name-calling now, Mr.
6 Cole. Let's just stick with the request you have.

7 MR. COLE: The request is that they turn over
8 the numbers of the people and that they not be
9 directing their people not to talk with us. I mean, if
10 they make that decision, but under our rules, an
11 attorney cannot tell another person not to talk with
12 the other side.

13 (1410)

14 MR. MADSON: Well, let me respond to my part
15 of it, which is quite limited.

16 First of all, I didn't write we're not talking
17 on there. But I don't think we got to get into
18 squabbles like that.

19 Your Honor, we're not talking track witnesses
20 here. We're talking retained witnesses that we pay
21 for. We have every right in that situation to have
22 these people say, look we retained you. We may or may
23 not use you in this case. We don't know yet. So,
24 therefore, we don't want you talking to the other side.

25 It's like a civil case. There's no difference

1 in a civil or criminal case.

2 Retained expert witnesses in a civil case are
3 never talking with the other side unless there's a
4 deposition.

5 I've been doing that for years and I've never
6 had this concern before. We may get a request, is it
7 okay to have a conversation. But most of the time what
8 happens is, you get in this kind of a situation.

9 You're not there and there's a telephone
10 conversation with a person representing your opponent.
11 And then they come into court and they say, Mr. Expert,
12 I had a conversation with you and didn't you admit such
13 and such? And he says, no, I didn't. And there you
14 are.

15 Now, if we're going to ever have one of these
16 type of conversations, naturally, we're going to be
17 present and I think there should be a recording and
18 things like that. But to have your opponent simply
19 call your retained experts to find out what they're
20 going to say is not under the rules. It's not
21 necessary. And that's simply our position.

22 (1470)

23 MR. CHALOS: Judge, what I would like to add
24 to that, if I recall correctly, you ordered us at the
25 beginning of this trial to turn over expert reports to

1 Mr. Cole. We expeditiously turned over to him two
2 very, very thick reports, complete reports, with backed
3 up material, with pictures, with explanations.

4 All we've gotten from Mr. Cole are summaries
5 prepared by Mr. Adams saying that I spoke to this
6 expert and he says the ship was sunk in an hour and a
7 half. Then they give us two pieces of paper in support
8 of that, but no backup material. And that's only come
9 within the last few days.

10 We've given our reports almost three weeks
11 ago, Your Honor.

12 So, I think Mr. Cole is not being fair in his
13 description of what's going on here insofar as the
14 experts are concerned.

15 I might add also that Mr. Adams, when he
16 speaks to our experts or he attempted to speak to our
17 experts, was very heavy handed with them.

18 He said to them, what business do you have
19 coming to Alaska to testify? Now, I don't think that's
20 proper. And that's the point we're trying to make.

21 THE COURT: Well, I would hope we could take a
22 little higher road than what I hear.

23 Do you have any summaries or reports of the
24 experts whose telephone numbers you're not disclosing?
25 (1545)

1 MR. CHALOS: No, Your Honor. Whatever reports
2 we had, we turned over to Mr. Cole immediately after
3 you told us to. As a matter of fact, we didn't even
4 have the reports when you ordered us to turn them over.
5 But we hurried up. Had the expert put it together and
6 gave it to him.

7 Now, the report on the computer simulation
8 expert is a thick report and then it's accompanied by
9 data that's about an inch thick, backup data. That's
10 the way a proper expert report is presented.

11 Mr. Cole has given us two sheets of paper from
12 a naval architect who supposedly did very, very
13 complicated and very sophisticated computer analysis of
14 the stability of this vessel. All we have is two
15 pieces of paper showing us graphs and charts.
16 Ridiculous stuff.

17 THE COURT: Okay. Mr. Madson, did you make
18 that quote in the paper that was read?

19 MR. CHALOS: No, Your Honor. I made that
20 quote.

21 MR. MADSON: No. Wait a minute. Which -- the
22 one you're talking about...

23 MR. CHALOS: Oh, sorry. I thought you meant
24 on the piece of paper.

25 MR. MADSON: Well, let me take the blame.

1 THE COURT: Okay. You made the quote, we're
2 not talking.

3 Now, Mr. Madson, did you make the quote in the
4 newspaper?

5 MR. MADSON: Your Honor, the newspaper guy
6 called me and he says, well, what's going on with this
7 voice thing? And I told him. I said, I think it's
8 nonsense. I did not talk to this expert myself, but
9 one of our people did. And he says, well, can I have
10 his name, and I said, no. I don't want you to have it
11 and I don't want it to get to the state because we may
12 have to use him.

13 (1598)

14 THE COURT: Okay. I'm ordering you to produce
15 the expert's name, address, and telephone number to Mr.
16 Cole. If you have received anything from him in
17 writing, I want you to -- Mr. Russo?

18 MR. RUSSO: Your Honor, I have some
19 information.

20 THE COURT: That's fine. You're interrupting
21 me and I don't appreciate that.

22 MR. RUSSO: Sorry.

23 THE COURT: Mr. Madson, produce the name,
24 address, and telephone number to Mr. Cole of the person
25 you were referring to when you made that statement, an

1 expert whose name you don't want to disclose.

2 And, if you've received anything in writing
3 from him, whatsoever, I want you to produce it to me
4 for in camera review. I'll determine whether or not it
5 constitutes a report or any kind of a test. I'll let
6 you know before I release to Mr. Cole so you can place
7 your objection on the record.

8 However, it sounds to me like you have made a
9 statement here that you may intend to use this witness.

10 And, so, under the Criminal Rule 16, I'm ordering you
11 to produce that information.

12 And, if you have telephone numbers and
13 addresses of witnesses which you intend on using, I'm
14 ordering you, Mr. Chalos, to disclose that too. I'm
15 talking about expert witnesses that are covered by Rule
16 16. I'm ordering you to disclose that information to
17 Mr. Cole.

18 And, if your experts don't want to talk to Mr.
19 Cole, I suppose that's up to them. However, I will
20 call your attention to the canons of professional
21 conduct. And I think there's quite a few cases that
22 address what happens to an attorney who specifically
23 instructs a witness not to talk.

24 I don't know if that pertains to criminal
25 defense attorneys or not. If may not. However, you

1 might want to review that just in case.

2 I do order you to produce the names,
3 addresses, and telephone numbers to those witnesses
4 that you might be calling in this case. Expert
5 witnesses only that are covered by Rule 16.

6 If you have any reports or any kind of
7 summaries that have been given to you or any kind of
8 test results that have been given to you, whether they
9 are in a summary form, whether they're in a written
10 form, or they've been told to you that you wrote down,
11 I want you to produce those to Mr. Cole.

12 This is not pre-trial discovery any more.
13 This is trial. And we're doing this to avoid a
14 legitimate request for a continuance by the state that
15 might occur if they're surprised when they didn't need
16 to be surprised.

17 The state has the same rights at this stage of
18 the proceeding to this information as you do.

19 MR. CHALOS: Well, it seems, Judge, if I may
20 say, with all due respect, that this has been a one-way
21 road.

22 We have to produce and provide, and have done
23 so, as far as the reports are concerned, to Mr. Cole.
24 He's had access to these reports for three weeks now.

25 We get piece-meal information insofar as their

1 experts are concerned.

2 So, really, if we're going to balance the
3 scale, I think the same ruling should go to...

4 THE COURT: Absolutely. The state should know
5 that, because you have much greater discovery rights
6 than the state does in a criminal proceeding.

7 If you have any indication that there's been
8 an abuse by the state of this, you can call it to my
9 attention. I'll issue orders to remedy those abuses.

10 (1730)

11 MR. CHALOS: Well, I'll tell you what the
12 abuse has been.

13 I'm convinced that there's been an obstruction
14 by the state to their experts not to prepare reports.
15 I'm thoroughly convinced because, in these type of
16 matters, the type of reports that would be generated by
17 their experts would be a full reports with backup
18 material.

19 All we're getting are just two pieces of paper
20 for all these experts.

21 THE COURT: Which experts are you referring to
22 in the future?

23 MR. CHALOS: I'm referring to Mr. Greiner, who
24 is a -- I don't know what kind of an expert he is. But
25 Mr. Greiner. I'm referring to Mr. Vorus. I'm

1 referring to Mr. Milwee, who, by the way, we haven't
2 received, except for a one-page statement, haven't
3 received a single stitch of evidence or charts or
4 graphs or discussion as to what he's going to testify
5 to.

6 I'm talking about their alcohol experts. Who
7 else? That's all I can remember.

8 THE COURT: Okay. Have you received
9 anything -- now, you know Mr. Greiner's name, address,
10 and telephone number. Is that correct?

11 MR. CHALOS: Yes.

12 THE COURT: And have you received any kind of
13 documentation pertaining to him?

14 MR. CHALOS: I received, again, about two or
15 three pages. But, to be fair, I should say that I
16 spoke with Ms. Henry yesterday about Mr. Greiner and
17 she agreed to make him available if I wanted to
18 interview him.

19 THE COURT: Okay. Mr. Vorus? How about him?

20 MR. CHALOS: No. Just about three pieces of
21 paper.

22 THE COURT: Do you have his name, address, and
23 telephone number?

24 MR. CHALOS: Yes, but I don't know where he
25 is. I think he's either en route or he's here.

1 THE COURT: You had his name and address and
2 telephone number how long?

3 MR. CHALOS: No. We didn't have his phone
4 number. Just his address.

5 THE COURT: How long have you had that?

6 MR. CHALOS: Oh, I guess since they filed the
7 notice of experts. But that's true also of our
8 experts.

9 THE COURT: How long have you had that? I
10 don't know when that date was.

11 MR. CHALOS: Let's say three weeks, four
12 weeks.

13 THE COURT: And you have three pieces of
14 paper. What are those three pieces of paper?

15 MR. CHALOS: I'll show you. This is supposed
16 to be a sophisticated analysis of a naval architect
17 who's been working on this for, I don't know, four or
18 five months. This is it.

19 There's no way to tell what he bases his
20 assumption on, what values he used, what he considered,
21 what he didn't consider.

22 THE COURT: This document, this memorandum,
23 has one page of type written, which indicates what Mr.
24 Vorus opinion would be if the vessel would have
25 capsized and sunk, sometime between an hour and an hour

1 and a half after refloating, if Captain Hazelwood would
2 have been successful in his attempts for removing the
3 vessel from the rocks. There some computer simulations
4 and then there's some predictions on the Exxon Valdez
5 grounding.

6 (1850)

7 I find that satisfies the rule.

8 Now, what's the next one? Mill?

9 MR. CHALOS: Milwee.

10 THE COURT: I'm sorry. Milwee?

11 MR. CHALOS: Milwee, M-i-l-w-e-e.

12 THE COURT: Do you have his name and address?

13 MR. CHALOS: I have his name and address.

14 THE COURT: How long have you had it?

15 MR. CHALOS: The same time that the state has
16 our experts names and address.

17 THE COURT: Can you be a little more specific.
18 I don't know that date either.

19 MR. CHALOS: Three to four weeks.

20 THE COURT: All right. Now, what have you got
21 from the state regarding his?

22 MR. CHALOS: As best as I can remember,
23 because I don't have his file with me, it was a one
24 page summary.

25 THE COURT: A summary of his testimony or what

1 he would say? For his tests or what?

2 MR. CHALOS: I don't think it was a summary of
3 his testimony. Just some background and just some
4 things that he said and that was it.

5 THE COURT: All right. And what about the
6 alcohol experts? Which names are you referring to on
7 these?

8 MADSON: I've got that one, Your Honor. And
9 it simply was he's going to testify on certain
10 subjects. It was a one paragraph memorandum from Mr.
11 Adams.

12 THE COURT: And who was the alcohol expert?

13 MR. MADSON: I forget his name.

14 MR. CHALOS: Propst?

15 MR. COLE: Prodie.

16 (1900)

17 MR. MADSON: Prodie. That's it.

18 THE COURT: Okay. How long have you had that
19 name and address?

20 MR. MADSON: Oh, the same length of time, Your
21 Honor.

22 THE COURT: Okay. And what did he say on the
23 paper?

24 MR. MADSON: It said, basically, we expect to
25 call Dr. Prodie who will testify on the following.

1 Probably three subjects; intoxication, the affects of
2 alcohol, and physiology. Things like this.

3 (1930)

4 THE COURT: All right. Mr. Cole, do you have
5 any other documents pertaining to these witness that
6 they've provided you pertaining to tests, summaries, or
7 an indication of what they will say if called as a
8 witness?

9 MR. COLE: Judge, all I have is, today I saw
10 come across the Pan-a-Fax 26 pages that Professor Vorus
11 had sent to him, which we are going to be providing as
12 soon as court is through today. It's a 26 page...

13 THE COURT: You came across it? How long have
14 you had it?

15 MR. COLE: It just came in today. This
16 morning. It's dated this morning.

17 THE COURT: Anything else that pertains to
18 these witnesses?

19 MR. COLE: Everything that we have has been
20 turned over.

21 THE COURT: All right. Well, no. Wait a
22 second. Before you make those expressions, Mr. Madson
23 and Mr. Chalos, it seems to me that the state has
24 complied with Criminal Rule 16 in its spirit and its
25 intent.

1 Now, if there's anybody playing hide the ball
2 here, it's the defendants playing hide the ball. Now,
3 you have certain that you can hide the ball, because
4 you're criminal defendants attorneys.

5 But don't be complaining to the state about
6 them hiding the ball. They're complying with the rule.

7 Now, I've ordered you to comply with certain
8 things and that's the end of it. They've provided --
9 there's enough information here that it complies with
10 the rule and they've told you they've given you
11 everything.

12 Now, there's not much else you can make them
13 do and I'm not about to make them go out and do
14 something.

15 Now, I don't know about Sam Adams being heavy-
16 handed. That's not too relevant as far as I'm
17 concerned right now.

18 MR. CHALOS: Yeah, but, Judge, with all due
19 respects. You ordered us three weeks ago to turn over
20 our report. We complied in good faith. We've given
21 them thick reports. They've had three weeks to analyze
22 them.

23 Mr. Cole is going to turn over to us 26 pages
24 of sophisticated calculations...

25 THE COURT: He just got it he said.

1 MR. COLE: Why did he just get it? He's had
2 this expert for how long? That's the point.

3 I mean, we could have asked our expert to give
4 us the calculations the day that they were testifying.

5 THE COURT: That's fine. Okay, we've had
6 enough hearing on this. You've heard the order of the
7 court.

8 It seems to me, when somebody says, we're not
9 going to talk and we've got an expert we're not going
10 to disclose the names to, when there's a rule that says
11 you're supposed to, that there's a very good example
12 when there's an intention shown that you're going to
13 call an expert that you're giving them information to.
14 (2024)

15 So, I find that both of you in this case have
16 deliberately contravened the spirit of Rule 16. Now, I
17 want you to start...

18 MR. CHALOS: That's not true, Judge.

19 THE COURT: Please, Mr. Chalos.

20 MR. CHALOS: That's not true.

21 THE COURT: Well, I find it is true. And I
22 don't want to have any more argument from you. So,
23 just disclose the names and address of witness and the
24 reports of those witnesses you intend on calling.

25 MR. CHALOS: He has that.

1 THE COURT: That's the end of it. That's the
2 end of it, counsel. That's the end of it.

3 Now, is there anything else we can bring up?

4 MR. MADSON: I would certainly like to, but I
5 guess it's the end of it, Your Honor.

6 THE COURT: That's the end of the discovery
7 question. Now, is there anything else we can bring up?

8 MS. HENRY: Your Honor, I think we should
9 probably take up the exhibits I was about to introduce.
10 If there's going to be an objection, we might as well
11 take that up now. That's why I started with those
12 exhibits before the break, just to make sure.

13 (2064)

14 MR. MADSON: Yes, there is.

15 First of all, relevancy. I think we all know
16 there was an oil spill. We're going to have more
17 prolonged detailed testimony of a spill. And he's
18 going to show where it goes. It's all hearsay. He
19 doesn't know who did it. It was all generated by other
20 people. We accept the fact there was a spill.

21 Now, if you want to show how far it went,
22 then, if that's admissible, Your Honor, then I think I
23 have the right to go in to show how far it shouldn't
24 have gone and what could have been done that wasn't.
25 And I'd be able to elaborate on that, but anyway I

1 would object to these.

2 THE COURT: Your objection on relevance is
3 overruled. And, as far as you taking up how far it
4 shouldn't have gone, that remains to be seen.

5 Kuzmider is a case right on point. And I've
6 already ruled that you cannot show that Alyeska or some
7 other agency didn't do their job and as a result the
8 oil spill was greater than it could have been.

9 I've already made that ruling, Mr. Madson. If
10 you wish me to reconsider that, you can do so in
11 writing.

12 MR. MADSON: I can't do it before these are
13 introduced, Your Honor.

14 THE COURT: Well, I've already ruled on your
15 objection as relevance. That objection's overruled.

16 MR. MADSON: Could I just put something on the
17 record on this? It's much easier than having to do it
18 in writing. It takes...

19 THE COURT: You've already made your
20 objection. Now, if you have an application to the
21 court, you can do so. But I've already ruled on your
22 objection as to relevancy.

23 (2117)

24 MR. MADSON: I would like to make an offer of
25 proof, Your Honor, on the record with regard to

1 relevancy. And it's more than relevancy. It goes much
2 further than that. And I can do it very briefly.

3 THE COURT: Okay. Go ahead.

4 MR. MADSON: Because I think the court, in all
5 due respect, is missing the point here.

6 This has nothing to do with that case. The
7 reason is, Captain Hazelwood is charged with creating a
8 risk. A risk that damage will occur, why it's spilling
9 oil in an amount of over \$100,000.00. That's the
10 damage.

11 Okay. There's the creation of the risk. If
12 part of that risk is the consideration of others that
13 are part of the whole process to stop that from
14 occurring, then I think we have the right to show that
15 it isn't like the case the court cited where it's an
16 intervening separate act that one has no right to rely
17 on because this is a situation where everybody in the
18 industry knew there was an oil contingency plan for
19 this very purpose. That was part of it.

20 And to show them that they didn't do their
21 job, isn't to show that there was an intervening cause.
22 Not at all.

23 It was to show that this reduces the risk that
24 was involved if there was a plan that was supposed to
25 prevent the very thing from happening.

1 THE COURT: All right. Your offer of proof
2 has been made. The ruling stands, Mr. Madson.

3 Evidence of Alyeska's, for example, failure in
4 your opinion to take prompt steps to reduce this damage
5 comes directly out of Kuzmider, as far as I'm
6 concerned.

7 The culpable state of mind in this case is
8 reckless. The damage of \$100,000.00 or more risk of
9 damage is a circumstance. And an intervening cause as
10 to a circumstance is covered by Kuzmider. So, I'm
11 going to continue in this type of ruling.

12 Now, you can make your applications, and I
13 suggest you do so if you have other evidence you want
14 to introduce so you can preserve your record. But I'm
15 giving you a clue as to my ruling. It will be
16 consistent with the Kuzmider case.

17 Is there anything else we can take up?

18 MR. COLE: Only a cup of coffee.

19 THE COURT: Okay. We'll stand at recess.

20 THE CLERK: Please rise. This court stands in
21 recess, subject to call.

22 (Off record - 10:20 a.m.)

23 (On record - 10:42 a.m.)

24 THE CLERK: This court now resumes its
25 session.

1 (With jury present)

2 THE COURT: You may proceed.

3 MS. HENRY: Thank you, Your Honor.

4 THE COURT: We're on the record, ladies and
5 gentlemen.

6 Q (Mr. LeBeau by Ms. Henry:) Sir, before the
7 break, I think we were talking about these fly
8 overs and that persons were drawing tracks and
9 they'd be put into computers. Is that right?

10 A Yes. That's correct.

11 Q Showing you what's been marked as plaintiff's
12 Exhibit 116 for identification, would you please
13 identify that?

14 A Yes. This is a map of Prince William Sound.
15 And it is -- is the oil identified in the upper
16 right hand corner as a black mass. There's a
17 heavy thick oil legend over here on the left hand
18 side in the box.

19 Q Okay. In the box, that box indicates which
20 DEC person was the one that actually drew it on
21 the chart, is that right?

22 A I think it represents the DEC person that
23 turned the map into Mr. Ken Zorich (ph).

24 Q Who is Mr. Ken Zorich?

25 A Mr. Ken Zorich is the computer operator that

1 generates the maps. That generated these maps.
2 Q And for plaintiff's Exhibit 116 for
3 identification, is there a date and time on that?
4 A Yes. That's March 24th 1100 to 1200, 1989.
5 Q And to the best of your recollection, does the
6 depiction of the placement of the spill at that
7 time, is that accurate?
8 A Yes, it's fairly accurate.
9 Q Does that diagram also show something from the
10 Exxon Baton Rouge?
11 A Yes, it does. There's an oily ballast water
12 discharge from the Exxon Baton Rouge.
13 Q And that's reflected on the chart also?
14 A Yes, it is.
15 (2340)
16 Q I'm showing you what's been marked as
17 plaintiff's Exhibit 115 for identification.
18 Would you please identify that.
19 A Yes. This is from the state of Alaska,
20 Department of Environmental Conservation. It's
21 an indication. -- it indicates the spread of the
22 oil on March 25th, 1989 from 1635 to 1800, which
23 would be 4:35 to 6:00 o'clock in the afternoon.
24 It's all indicated as heavy slick 60 square
25 miles in this upper right hand area of the map.

1 Q And which DEC employee's name is on that?
2 A This is also Mr. Sautner.
3 Q Does that, as best you remember, accurately
4 reflect the placement of the oil on that date and
5 time?
6 A Yes. That would have been the approximate
7 location of the oil at that time.
8 Q I'm showing you what's been marked as
9 plaintiff's Exhibit 114 for identification.
10 Would you please identify that.
11 A Yes. This is a map of the oil, again. The
12 oil depicted on this particular map, dated March
13 26th, 0815 to 0950. There's heavy sheen
14 indicated by the legend on the left and there's
15 also heavy slick indicated as part of the legend.
16 Q Which DEC employees' name...
17 A And this is also Mr. Sautner.
18 Q And to the best that you can recall, does not
19 depict the presence of the sheen and the slick on
20 that date and time?
21 A I wasn't in the air on that date and time.
22 Q All right. Where were you on that day?
23 A On March 26th I would have been in Valdez.
24 Q Did you ever board the Exxon Valdez on that
25 day, do you recall?

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A Yes, I did.

Q So you would have been in that area?

A Yes. I would have been in the area.

The oil was in the -- was generally spread throughout this area.

THE COURT: What number is that last exhibit?

A This is Exhibit 114.

(Mr. LeBeau by Ms. Henry:) And although you were not in the air that day, you were in the area of the Exxon Valdez and ...

A Yes.

...the spill at that time?

A Yes, I was.

Does that accurately reflect, as best you could tell from being on ground as opposed in the air, the area?

A Yes, it's a reasonable representation of the oil.

(2460)

Q I'm showing you what's been marked as plaintiff's Exhibit 113 for identification. Could you identify that?

A Yes, this is an expanded diagram of an island, and I'd have to look here to see the name of the island. I believe this is Knight Island in this

1 vicinity here. And just to the southwest of
2 Naked Island. And it depicts the spread of the
3 oil down along the eastern most boundary of
4 Knight Island and also up into the space between
5 Knight Island -- it's Knight Island Passage.

6 Q Sir, perhaps you can point it out on the big
7 chart.

8 A Yes.

9 (Pause)

10 A Yes. The oil was spreading down Knight Island
11 Passage in about this vicinity and also had come
12 down into this vicinity. And had down a little
13 bit down in this direction here, towards Montague
14 Island.

15 Montague Island being along this area here.
16 This is Knight Island. Naked Island indicated
17 here.

18 Q Okay. And you can go ahead and sit down.

19 The exhibit I just showed you, which is
20 plaintiff's 113 for identification, what is the
21 date on that?

22 A This is dated March 29th, 0615 to 0800 hours.
23 And this is indicated that this was done with IR
24 with day light.

25 Q What does that mean?

1 A Infra red with day light.
2 Q Whose name is on that?
3 A Mr. Sundat (ph) and Mr. Lefsy (ph).
4 Q Who's Mr. Lefsy?
5 A I don't know Mr. Lefsy.
6 Q Now, to the best that you can recall, is the
7 placement of the oil accurate on that chart for
8 that date and time?
9 A I believe that's accurate.
10 Q I'm showing you what's been marked as
11 plaintiff's Exhibit 112 for identification.
12 Would you please identify that?
13 A Yes. This is of -- exhibit that shows
14 combined oil from March 30th 1989. This is a
15 combined map of Joe Sautner and Richard Sundat
16 from March 30th, 1989 between 1700 hours, which
17 would be 5:00 o'clock, and 1856, which would be
18 6:56 in the evening.
19 Q Does that chart break down the oil as sheen or
20 heavy or something on it?
21 A Yes. This chart is broken down into wind
22 rose, sheen, and heavy oil.
23 Q What is wind rose?
24 A A wind rose would be an isolated finger of oil
25 that the wind had separated out. And it would be

1 just lined up on a straight line or blown into a
2 straight line.

3 Q To the best that you can recall, does that
4 chart accurately reflect the placement of the oil
5 on that date?

6 A This is the report that we received from Mr.
7 Sautner and Mr. Sundat on that date.

8 MS. HENRY: At this time, the state would move
9 into evidence plaintiff's Exhibits 112 through 116.

10 (2645)

11 MR. MADSON: I object to those, Your Honor, on
12 the grounds stated earlier, plus they're merely
13 cumulative. They have no probative value, and, if it
14 does, it's certainly out-weighed by any prejudicial
15 affect it would have.

16 THE COURT: All right. Those objections are
17 overruled.

18 EXHIBITS 112 THROUGH 116 ADMITTED

19 MS. HENRY: Thank you, Your Honor. May they
20 be admitted?

21 THE COURT: They're admitted.

22 (Pause)

23 Q (Mr. LeBeau by Ms. Henry:) Sir, I'm showing
24 you what's been marked as plaintiff's Exhibit 111
25 for identification. Can you identify that

1 exhibit?

2 A Yes. This is an aerial photograph taken by

3 Earl Matthewess (ph), who is a contractor to the

4 Department of Environmental Conservation. It

5 shows the Exxon Valdez and also I believe that's

6 the Exxon tanker Baton Rouge.

7 Q Are they connected up?

8 A And then they're tied. The Baton Rouge is

9 moored along side the Exxon Valdez.

10 Q Do you know where they were at that time?

11 A The boats were at Bligh Reef. The Exxon

12 Valdez was rocking back and forth with the tied

13 on Bligh Reef.

14 Q Does that photo also depict any oil?

15 A Yes. That photo depicts oil contained by a

16 containment boom in front of the Exxon Valdez and

17 the Baton Rouge.

18 Q Do you know what day that photograph was

19 taken?

20 A I believe this would have been taken March

21 26th.

22 Q Do you know what day of the week that was? Do

23 you remember?

24 A March 26th would have been on Sunday.

25 Q So it would have been Sunday morning or Sunday

1 evening? Do you know?

2 A I can't tell from this.

3 Q Do you recall a storm coming up on Sunday?

4 A Yes. There was a wind storm that started on
5 Sunday afternoon about 2:30 or so.

6 Q And based upon that, can you tell from this
7 photograph whether it was taken before that storm
8 started?

9 A There appear to be swells and that may have
10 been taken in the afternoon on the 26th.

11 Q And does it accurately reflect the placement
12 of the two vessels, the boom, the oil within the
13 boom, and then also some sheen in the water?

14 A Yes. It certainly reflects the accurate
15 placement of the two vessels, the boom and the
16 oil and the oil distribution across away from the
17 vessels.

18 MS. HENRY: The state would move into evidence
19 plaintiff's Exhibit 111.

20 (2822)

21 MR. MADSON: Well, I object, Your Honor, on
22 the grounds raised earlier and certainly as to
23 relevance. Is this to show the placement of the boom
24 or the containment or what? I don't know the purpose
25 of this photograph, that's what I'm saying.

1 There's a number of photos already of the oil.
2 How many more do we need? It's certainly cumulative,
3 if it doesn't show containment.

4 THE COURT: Why don't you come up here for a
5 minute.

6 (2840)

7 (Whispered bench conference as follows:)

8 THE COURT: Mr. Madson, when you say, on the
9 grounds voiced earlier, I don't know what you're saying
10 because that's pertaining to one and so you should
11 recall your objections so I'll know what they are.

12 Now, your objection to relevance, I'm going to
13 overrule it.

14 (2863)

15 THE COURT: The objection as to relevance is
16 overruled.

17 MR. MADSON: And also cumulative, Your Honor.
18 No probative value.

19 THE COURT: All right. In the future make all
20 your arguments before I rule.

21 I'll rule now again. I'm going to overrule
22 that objection too. Make them all at once.

23 The document is submitted.

24 EXHIBIT 111 ADMITTED

25 MS. HENRY: Thank you, Your Honor.

1 Q (Mr. LeBeau by Ms. Henry:) Sir, on April 15th
2 of last year, did you have occasion to visit the
3 beaches on Ellamar Island?
4 A Yes, I did.
5 Q And what was the purpose of that?
6 A I had been asked to gather some demonstrative
7 evidence. Some oil samples. And some video tape
8 of the oil on a beach out in Prince William Sound
9 that was damaged as a result of the grounding of
10 the Exxon Valdez.
11 Q All right. If you would, using the chart, can
12 you show us where Eleanor Island is?
13 A Yes.
14 Q The pointer's behind you to your right, sir.
15 A Yes. Eleanor Island is right in this
16 vicinity. Right here at the tip of this Knight
17 Island group, adjacent to Knight Island Passage.
18 Q And, although you indicated a little earlier,
19 can you give us an idea of, generally, the path
20 of the oil?
21 A Yes. The oil essentially moved down through
22 here like this.
23 Q And so it impacted Eleanor Island?
24 A And impacted Eleanor Island.
25 Q What's the island just below Eleanor Island?

1 A That's Ingot Island. Below that is Disk
2 Island. And I believe this is all part of Knight
3 Island through here.

4 Q Was there any particular beach that you landed
5 on?

6 A That I looked at?

7 Q Looked at?

8 A Yes. I landed in Northwest Bay, which is up
9 in this portion. The northwestern portion of
10 Eleanor Island.

11 Q All right. You can go ahead and resume your
12 seat.

13 Did you, in fact, take some samples of oil
14 from that beach?

15 A Yes, I did.

16 Q And you also said another purpose was to take
17 some video tape?

18 A Yes. We took some video tape. I brought an
19 employee of the department with me to operate the
20 video camera.

21 Q And who was that?

22 A That was Laurie Telfer.

23 Q Now, were you wearing any special clothing
24 when you did this?

25 A Yes. I had a Mustang Flootation suit on.

1 It's orange in color. And also I had on some
2 rubber gloves when we were collecting samples of
3 the oil. And in addition, I had some coveralls,
4 some protective coveralls, to protect the Mustang
5 suit from...

6 Q To protect what?

7 A To protect the Mustang suit, the orange suit,
8 from contamination with the oil.

9 The protective coveralls were a disposable
10 coverall. Both one pair -- I had several
11 different pairs. Some were white. Some were
12 yellow in color.

13 Q Did the helicopter pilot make you do anything
14 with these?

15 A Yes. The helicopter pilot made me take them
16 off every time I went to get back into the
17 helicopter because they were covered with oil.
18 And they were disposed of in plastic bags into
19 the baggage compartment of the helicopter and
20 properly disposed of when we arrived in Valdez.

21 Q Now, did you have an opportunity to review the
22 video tape that was taken that day?

23 A Yes, I did.

24 (3110)

25 Q I'm showing you what's been marked as

1 plaintiff's Exhibit 118 for identification. Do
2 you recognize that, sir?

3 A Yes. This is a tape that was taken on Eleanor
4 Island.

5 Q On April 15th?

6 A On April 15th.

7 Q And when was the most recent time you reviewed
8 that?

9 A A couple of days ago in your office.

10 Q Now, does that accurately reflect scenes of
11 you taking samples of oil and then also scenes of
12 the beaches on Eleanor Island?

13 A Yes, it does. It very accurately depicts the
14 operation that I was performing on Eleanor Island
15 on that day.

16 MS. HENRY: The state would move into evidence
17 plaintiff's Exhibit 118.

18 MR. MADSON: Your Honor, with all due respect,
19 this is highly, totally irrelevant. It's taken on, as
20 I understand it, April 15th of a beach scene. There's
21 no relevance whatsoever to what the state has to prove,
22 which is the risk of damage over \$100,000.00.

23 That has been shown a hundred times over.
24 This is cumulative. It's designed only for one purpose
25 and that's to prejudice my client in the eyes of the

1 jury.

2 It has no other purpose and I strenuously
3 object.

4 THE COURT: Will counsel approach the bench.
5 (3196)

6 (Bench conference - whispered)

7 THE COURT: What's the purpose of this?

8 MR. COLE: Your Honor, this is not for the
9 damage of property. One other purpose is to provide
10 the dangerous means and we have to show that an oil
11 spill, in this case, means that element of risk damage
12 by widely dangerous means.

13 MR. MADSON: Your Honor, I made my objection.

14 THE COURT: Okay.

15 (3217)

16 THE COURT: The objection's overruled.

17 MS. HENRY: Sir, before we...

18 THE COURT: It's admitted.

19 (3265)

20 EXHIBIT 118 ADMITTED

21 MS. HENRY: Thank you.

22 Q (Mr. LeBeau by Ms. Henry:) Before we play the
23 video, did you have sound when you were taking
24 this video?

25 A Yes. There was some sound on the video.

1 During a portion of the video, the helicopter was
2 running on the beach and that overwhelmed most of
3 the audio portion of the video tape.

4 Q So, listening to the audio isn't going to be
5 very helpful?

6 A It would not be very helpful at all.

7 Q Okay. So, before I actually play it, perhaps
8 you can explain a couple of things on it.

9 There's a shot showing a creek with something
10 in it. What is that?

11 A Well, there's some oil. It looks like little
12 shadows floating by and it's actually little
13 globules of oil washing off of the beach down
14 into the sea.

15 Q And there's also a shot of a cooler. What is
16 that for?

17 A The cooler was used to preserve the samples.
18 To keep the samples. There was some blue ice in
19 the cooler. I was storing the samples in the
20 cooler.

21 In addition, I was also carrying equipment
22 with me in the cooler.

23 Q There are also some shots that appear to be
24 shots of a beach. Where was that taken?

25 A Those were beaches in Northwest Bay.

1 Q How about the shots from the helicopter. What
2 were those?

3 A Shots from the helicopter were taken along the
4 shoreline in Northwest Bay and kind of along
5 through this -- well, Northwest Bay is kind of
6 shaped like this. I don't know how to describe
7 that.

8 Q Like a "W" maybe?

9 A Like a "W." We flew around and I had the
10 video camera hung in the window of the
11 helicopter. There's a small little window that
12 could be opened.

13 And, occasionally, I wasn't able to view all
14 of the video taping as it was taking place. And,
15 occasionally, you'll see the window frame intrude
16 into the photograph.

17 Q Now, was this taken at any particular tide?

18 A This would have been at a low tide. And the
19 video tape depicts the staining of the oil along
20 the shore in Northwest Bay.

21 Q Was there any booming done in that area?

22 A Yes. There was some booming in place. In
23 addition, there was a rope mop skimmer.

24 Q What is that?

25 A A rope mop skimmer is a device. It's a

1 specially treated mop type of arrangement. It's
2 about, oh, this large in diameter. And you roll
3 that out around some pulleys and through the oil.
4 And then the mop is squeegeed back into a drum
5 and the oil is collected.

6 This device collects the oil and then runs
7 around back on to the -- there's a limited
8 portion, view, of that. We attempted to hover
9 over that area to show the rope mop skimmer.
10 That skimmer.

11 The helicopter didn't have enough power to
12 remain in place.

13 Q And does the video also show some booms in
14 place?

15 A Yes, it does.

16 MS. HENRY: Your Honor, at this time I request
17 to be able to play the video.

18 THE COURT: You may do so. How long is the
19 video?

20 MS. HENRY: The portion that I was going to
21 play is about 12 minutes.

22 THE COURT: All right. No sound, is that
23 correct?

24 MS. HENRY: Correct.

25 THE COURT: Okay.

1 (3488)

2 (Video tape played)

3 (Tape: C-3639)

4 (047)

5 Q (Mr. LeBeau by Ms. Henry:) Sir, is the video
6 that was just played one of many videos that were
7 taken of the beaches?

8 A Yes, it's one of many, many videos that was
9 taken of the beaches.

10 Q And to your knowledge, the oil spill is the
11 result of the grounding of the Exxon Valdez, the
12 largest one in the history of the United States?

13 A Yes, it is.

14 Q Thank you very much, sir. That's all the
15 questions I have.

16 CROSS EXAMINATION OF MR. LeBEAU

17 BY MR. MADSON:

18 Q Mr. LeBeau, is it the largest one in the
19 world?

20 A To my knowledge, no, it was not.

21 Q What other ones were larger?

22 A I believe the Amoco Cadiz was larger.

23 Q Where was that?

24 A On the coast of France.

25 Q What ship was involved in that? What tanker?

1 A The Amoco Cadiz.
2 Q And where was that from?
3 A I believe that ship belonged to Amoco.
4 Q Is that an American Company --
5 American/Arabian company?
6 A I'm not sure.
7 Q Do you know if the captain was prosecuted for
8 that spill?
9 MS. HENRY: Objection. Relevance.
10 THE COURT: Don't answer the question.
11 Sustained.
12 Q Any other ones that have been larger?
13 A I'm not aware of any others at the moment.
14 Q Why did you take that video?
15 A I was requested to.
16 Q By whom?
17 A By Dean Guanelli.
18 Q Who is Dean Guanelli?
19 A Dean Guanelli is with the Attorney General's
20 office.
21 Q And that's for the state of Alaska, right?
22 A Yes.
23 Q And this was taken April 15, was it not?
24 A That's correct.
25 Q And that's well over two weeks after the

1 spill, right?

2 A Yes, it was.

3 Q And I imagine that was taken to document the
4 oil and the beaches to show what was there?

5 A That's correct.

6 Q Have you taken any after that?

7 A Yes, I did.

8 Q Did you bring those with you?

9 A No, I did not.

10 Q Are you going to take any this summer or this
11 spring?

12 A I probably will not be taking any. I probably
13 won't be working on the oil spill this summer.

14 Q Do you know if there are plans to take
15 additional videos this spring and summer?

16 A I'm not personally aware.

17 Q Was that video taken for possible use as far
18 as a lawsuit by the state of Alaska against Exxon
19 or Alyeska?

20 MS. HENRY: Objection. Calls for speculation
21 or hearsay.

22 MR. MADSON: If he knows, Your Honor.

23 THE COURT: Well, if the basis of how he knows
24 is that somebody else told him, then that would be
25 hearsay. I don't see how that is going to assist the

1 finder of fact, the answer, in any event, so I'm going
2 to sustain the objection.

3 Q (Mr. LeBeau by Mr. Madson:) The oil that you
4 were sampling -- the video shows you putting oil
5 in a jar. I assume that was you.

6 A Yes.

7 Q You kept those samples for some purpose?

8 A Yes.

9 Q What for?

10 A Those were collected as demonstrative evidence
11 samples.

12 Q That was, in fact, crude oil?

13 A That was, in fact, a mixture of crude oil and
14 sea water and other elements.

15 Q You also answered some questions for Ms. Henry
16 regarding booming that we can see, skimmers,
17 right?

18 A A skimmer.

19 Q A skimmer and some booms?

20 A That's correct.

21 Q What are booms?

22 A Booms are devices that are typically -- they
23 consist of a float in the upper portion and the
24 skirt in the bottom portion. And there typically
25 will be a weight on the bottom side of the skirt

1 to hold the skirt in place. There are also
2 sorbent booms which are simply a floating
3 component of sorbent material that's used to
4 gather oil off the water or off of the land.

5 Q And were both types employed in the video?

6 A I believe they were.

7 Q Who put them there?

8 A I don't know.

9 Q What purpose do they have? Just to contain
10 oil?

11 A To protect the beach, typically. To gather
12 oil.

13 Q Do you know when they were placed there?

14 A No, I do not.

15 Q Do you know what their -- somebody must have
16 put them there for a purpose. You said to
17 protect the beach. It looked like it was too
18 late, right?

19 A Possibly they were put in place there to
20 protect other beaches so that the oil, when it
21 was washed off the beach at high tide, would not
22 wander around and impact other beaches.

23 Q And whose responsibility is it to put those
24 booms there?

25 MS. HENRY: Judge, the witness has already

1 answered he doesn't even know who put them there.

2 THE COURT: Mr. Madson?

3 Q You don't know who put them there or who is
4 responsible to put them there to prevent oil from
5 spreading?

6 MS. HENRY: Same objection?

7 THE COURT: He just answered he doesn't know
8 who put them there.

9 Do you know who put them there?

10 A I don't know, personally, who put them there.

11 Q Do you know who is supposed to put them there?

12 MS. HENRY: Objection, speculation and
13 irrelevant.

14 THE COURT: Sustained.

15 Q What were you doing there as a DEC
16 representative?

17 A I was there collecting demonstrative evidence
18 samples.

19 Q At the request of the Attorney General's
20 Office.

21 A Of the Attorney General's Office, Mr.
22 Guanelli.

23 Q And you have no knowledge at all about the
24 different roles, including DEC, and what they
25 play in oil containment or prevention or anything

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like that?

MS. HENRY: Objection. Irrelevant.

THE COURT: Sustained.

MR. MADSON: No other questions.

MS. HENRY: I have no other questions, Your Honor.

THE COURT: Call your next witness.

(Witness excused)

(Oath administered)

A I do.

JOHN BYERS

called as a witness in behalf of the plaintiff, being first duly sworn upon oath, testified as follows:

THE CLERK: Sir, could you please state your full name and then spell your last name?

A My name is John Byers, B-y-e-r-s.

THE CLERK: Your current mailing address?

A My current mailing address, 222 West 7th Avenue, Box 17, Anchorage.

THE CLERK: And your current occupation?

A I'm a radioman in the Coast Guard.

(348)

DIRECT EXAMINATION OF MR. BYERS

BY MS. HENRY:

Q Sir, how long have you been in the Coast

1 Guard?

2 A 15 years.

3 Q And were you recently requested to execute a
4 subpoena issued at the request of the District
5 Attorney's Office?

6 A Yes, ma'am.

7 Q In fact, there were two subpoenas, is that
8 correct?

9 A Yes, ma'am.

10 Q And what were you requested to do?

11 A I was requested to proceed to Valdez and to
12 make some recordings off of an original tape to
13 verify that they were accurate and correct.

14 Q And what tape are we talking about?

15 A These two tapes that I have here.

16 Q What was this original tape?

17 A The original tape was a magnasync recorder,
18 which is a 30-channel recorder. And it's
19 commonly used to record radio traffic, and that's
20 the purpose of the tape.

21 Q Now, the recording -- I assume it records at
22 the time the radio traffic is occurring?

23 A It is started and continues for 24 hours; it
24 does not stop. It is a continuous recording.
25 Any dead spots or anything else would be on that

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tape.

Q And are the original tapes kept by the United States Coast Guard in the ordinary course of business?

A Yes, they are.

Q And specifically, the tape that you were recording off of, was that a tape that was originally recorded on March 24, 1989?

A Yes, it was.

Q Now the subpoenas that you received, were they specific as to a time on the tape that you were to record?

A Yes, ma'am.

Q Now, how could you tell a time on the tape?

A The recording instrument itself has a display for the time. You can enter in the time that you wish to go to and the machine will electronically seek that time. In the course of event of recording on to the tape, it also records the time. And that's how I was able to go to the exact times.

Q Now, there were actually two subpoenas to record two different times?

A Yes, ma'am.

Q And you have before you two tapes. Are those

1 the tapes that you...

2 A Yes, they are.

3 Q Now, the first subpoena -- do you recall the
4 time it was requested that you tape the
5 conversations?

6 A Yes. If I can refer to these. The first time
7 was at 0031 -- minute 31, and it ran through
8 minute 31. It was actually a couple of seconds.
9 It was minute 31 and 35 seconds through minute 31
10 and 57 seconds, which is on the tape.

11 Q So that tape would be a conversation that
12 occurred at 31 minutes after midnight on the
13 24th?

14 A Yes.

15 Q And is that an accurate copy of that
16 conversation?

17 A Yes, it is.

18 Q From the original?

19 A Yes, ma'am.

20 Q And what about the second one?

21 A Also, on this first tape, if I may, there was
22 also minute 38 through 39.

23 Q So it continued for...

24 A There was a gap of seven minutes on what had
25 been requested, which was blank. That was the

1 dead time. The recording which made this is
2 voice actuated.

3 Q So you started recording at 31 minutes after
4 midnight?

5 A Yes.

6 Q And then there was a quiet time?

7 A There was a quiet time.

8 Q Is that reflected on the tape or not?

9 A No, that is not reflected on the tape.

10 Q And then another conversation began?

11 A And then another conversation begins.

12 Q And is that on the tape?

13 A That is on the tape.

14 Q What time is that conversation?

15 A That was at minute 38 through minute 39.

16 Q Okay. Now when you say minute 38, what...

17 A Zero-zero 3-8, of the same hour.

18 Q Why don't you go ahead to the second tape.

19 A The second tape, the time on that was zero
20 911.26 through zero 913.47.

21 Q And that would be 9 o'clock in the morning?

22 A Yes.

23 Q On the same day?

24 A On the same day.

25 Q And the conversations on that tape, do they

1 accurately reflect the conversations on the
2 original tape?

3 A Yes, they do.

4 (Pause)

5 Q I will show you what has been marked
6 Plaintiff's Exhibit 120 for identification,
7 first. Just so the record is clear, which tape
8 is that?

9 A Which tape is this?

10 Q Yes. As far as the time of the conversation.

11 A I would have to go through and look at the
12 time of the conversation. Zero-zero 3-1 decimal
13 3-5 (0031.35) through zero-zero 3-1 decimal 5-7
14 (0038.37). And Zero-zero 3-8 decimal 4-7
15 (0038.47) through zero-zero 3-9 decimal 4-4
16 (0039.44).

17 Q And showing you what's been marked as
18 Plaintiff's Exhibit 121 for identification.
19 Which tape is that?

20 A This is the zero 9-11 decimal 2-6 (0911.26)
21 through zero 9-13 decimal 4-7 (0913.47).

22 Q Thank you, sir. That's all the questions that
23 I have.

24 MR. MADSON: I guess I can't ask any, Your
25 Honor. I don't know what it's for, so I don't have any

1 questions. Well, maybe I do. It's hard for a lawyer
2 to sit here and not to say anything.

3 CROSS EXAMINATION OF MR. BYERS

4 BY MR. MADSON:

5 Q What did you record that on, sir? What did
6 you record these tapes on? What kind of
7 equipment?

8 A What did I use to record these?

9 Q Yes. Right.

10 A I used a Dentron cassette recorder.

11 Q A what?

12 A Dentron.

13 Q Dentron?

14 A Cassette recorder.

15 Q How did you do that? Did you hold a
16 microphone of the recorder to the speaker, or
17 what?

18 A No, sir. No, sir. This is hard-wired
19 through. Meaning, it has a connection from the
20 speaker jack of the 30 channel into the cassette
21 player.

22 Q Is that a variable speed cassette player that
23 you use?

24 A No, not to my knowledge.

25 Q You don't know?

1 A I do not know.

2 Q Was it 110 power or battery powered at the
3 time?

4 A It was 110.

5 Q And do you know what its characteristics are -
6 - it's performance characteristics? Pitch and
7 wow and flutter and all that kind of stuff?

8 A I have no idea.

9 Q And you made it only because the District
10 Attorney's Office subpoenaed you and requested
11 you to do this?

12 A Yes, sir.

13 Q So you did it?

14 A Yes, sir.

15 Q Okay. No other questions.

16 MS. HENRY: No questions, Your Honor.

17 THE COURT: You're excused.

18 (Witness excused)

19 MR. COLE: Your Honor, at this time the state
20 would George Greiner.

21 (Oath administered)

22 A I do.

23 GEORGE GREINER

24 called as a witness in behalf of the plaintiff, being
25 first duly sworn upon oath, testified as follows:

1 THE CLERK: Sir, would you please state your
2 full name and spell your last name?

3 A George Kirk Greiner, Jr., G-r-e-i-n-e-r.

4 THE CLERK: Your current mailing address?

5 A 3107 Northeast 160th Street, Ridgefield,
6 Washington, 98642.

7 THE CLERK: And your current occupation, sir?

8 A I'm a consultant.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION OF CAPTAIN GREINER

11 BY MR. COLE:

12 Q Captain Greiner, why have you been called to
13 testify in this matter?

14 A I've been called on behalf of the state to
15 identify the damage to the bottom of the tanker
16 through a series of photographs and analyze it,
17 to do a reconstruction of the track line of the
18 Exxon Valdez after it left the Narrows in Prince
19 William Sound, and also to evaluate the actions
20 after the grounding by the Captain.

21 Q Where do you live right now?

22 A I live in the state of Washington --
23 Ridgefield, Washington.

24 Q Would you describe what you do for a living?

25 A Yes, sir. I'm a marine safety consultant.

1 Actually, I do two things. I run a company
2 called Maritime and Environmental Consultants.
3 And that is an expert referral company. And I
4 also do consulting in the marine safety field.

5 Q How long have you been involved in the
6 maritime industry?

7 A The industry -- since I graduated from the
8 Coast Guard academy, in 1953.

9 Q Let's talk about your educational background.
10 Where did you attend the Coast Guard Academy in
11 1953?

12 A The Coast Guard Academy is located in New
13 London, Connecticut.

14 Q How long a program is that?

15 A That's a four year program.

16 Q And do you receive some type of degree?

17 A Yes, sir, I received the Bachelor of Science
18 degree.

19 Q And did you attend any schools after attending
20 the academy?

21 A Yes, sir. I attended a number of service
22 schools, and I also attended a college,
23 University of Puget Sound, later on, in
24 Washington.

25 Q I would like to focus on a couple of these.

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The Navy firefighting school in 1954. What was that?

A That's a school conducted by the Navy which basically teaches officers how to fight fires on vessels.

Q Did you attend a school named Desland Engineering School?

A Yes, sir. Desland Engineering School. Desland stands for destroyer and landing. It's a Navy school. I believe it's a 16 week school, preparing officers for the duty of engineer officer on military ships. Engineer officer is the equivalent of the chief engineer on merchant ships.

Q When did you attend that school?

A I attended that school in 1955.

Q And after that, did you then attend a Navy damage control school?

A Yes, sir, I did.

Q When was that?

A That was 1955, also. It would be in Philadelphia, Pennsylvania.

Q What was the purpose of attending that school?

A The Desland Engineer School -- I'm sorry, the damage control school is a Navy school, also.

1 And that is one which trains officers how to
2 combat flooding and damage to vessels. In other
3 words, fires, flooding, collision, et cetera.
4 It's, I guess, what the name implies, damage
5 control, or the control of damage on vessels.

6 Q Were there any specific courses that they
7 taught you in that school?

8 A Yes, sir. They taught you about vessel
9 stability. They taught you something about
10 strength and materials. The manner of
11 temporarily repairing damage on vessels; holes in
12 the hull and bulkheads, and such like that.

13 Q Did you attend a Loran school in 1956?

14 A Yes, sir. Loran stands for Long Range Aids To
15 Navigation. And that's a school for prospective
16 commanding officers. It's a radio transmitting
17 station.

18 Q Now, I notice that several of these schools
19 are Navy schools. Why were you attending Navy
20 schools. Weren't you in the Coast Guard?

21 A Yes, sir. I was in the Coast Guard -- the
22 Coast Guard sends their people to Navy schools
23 for several reasons. Number one, there aren't
24 enough people in the Coast Guard to support a
25 specialized school in the Coast Guard. And,

1 number two, the Coast Guard operates under the
2 Navy in time of war, so that there is a
3 relationship.

4 Q What school did you attend in 1958?

5 A I went to the Merchant Marine Safety School,
6 then located in New London Connecticut.

7 Q Why did you go there?

8 A The Merchant Marine Safety School is the
9 school which they sent officers to before they
10 entered the marine safety field -- or, the
11 merchant marine safety field.

12 The merchant marine safety field is the
13 regulation of commercial shipping. But before
14 they went into that type of duty, they had to go
15 through and successfully complete that school.

16 Q And what was taught at that particular school?

17 A Well, there was a lot taught at it. A lot of
18 regulations -- Code of Federal Regulations; the
19 manner of inspecting vessels. In other words,
20 how to apply the regulations. Licensing of
21 people to sail as officers in the Merchant
22 Marine. The investigation of casualties that
23 occurs in the Merchant Marine. It basically
24 taught you the whole realm of information
25 necessary to at least start out in that field.

1 Q The investigation of casualties. Would you
2 explain to the jury what that particular area
3 was?

4 A Yes, sir. Any time an American vessel has a
5 casualty in U. S. waters or -- I'm sorry,
6 anywhere in the world -- or a foreign vessel has
7 a casualty in U. S. waters, the Coast Guard
8 investigates it if it exceeds damage in the
9 amount of a certain amount of dollars --
10 \$25,000.00 I think it is now.

11 Also, if the vessel grounds; if there's a
12 collision; if there's injury, or a person is
13 injured over 72 hours, the Coast Guard is charged
14 with investigating that casualty. And this is
15 the procedure -- the teaching of the procedure to
16 use by a person that's investigating it.

17 There is a second half to the investigation,
18 and that is, that since the Coast Guard has
19 licensed people, when they find negligence or
20 misconduct, they take action against the license.
21 And the investigator would be the one who took
22 action against the license before an
23 administrative law judge.

24 Q Now, does the accident training that you
25 receive include some knowledge about salvage and

1 what's required?

2 (1050)

3 MR. CHALOS: Objection, Your Honor. He said
4 he went to a Marine Safety School, not an accident
5 school.

6 THE COURT: You can ask the question.
7 Objection is overruled.

8 Q Did the area that you were taught about
9 accident safety, did that include any information
10 about salvage?

11 A No, sir, it didn't.

12 Q The next school that you attended is the Army
13 Instruction Training School in 1967, is that
14 correct?

15 A Yes, sir.

16 Q And what was that for?

17 A I was assigned as the officer-in-charge of the
18 Marine Safety School. That's the same school
19 that I went to nine years previously. It is now
20 located in Yorktown, Virginia. And as such, I
21 would be expected to teach in that school. So
22 they send you to a school to teach you how to
23 teach.

24 Q The next educational program is a computer
25 institute program, is that correct?

1 A Yes, sir, in 1976.

2 Q And what was that for?

3 A That was just an orientation on how to use
4 computers. I was bringing them in to our office
5 in the Coast Guard and I wanted to know more
6 about them.

7 Q You received a law degree in 1977?

8 A Yes, sir.

9 Q And where was that at?

10 A University of Puget Sound.

11 Q How many years did it take you to get that?

12 A Four years, sir.

13 Q And in 1978 you attended a United States Coast
14 Guard Hazardous Chemical School. Why was that?

15 A Yes, sir. One of the duties that the Coast
16 Guard Captain of the Port has, is to regulate the
17 handling of hazardous cargos and to clean up or
18 supervise the clean up of spills of hazardous
19 materials.

20 That may involve the evacuation of areas. It
21 may not involve the Coast Guard directly on the
22 clean up. They may just oversee the spiller and
23 seeing that he cleans up properly. Or, it may
24 involve the Coast Guard.

25 Q Now, how long were you in the Coast Guard?

1 A I retired in 1982. I graduated from the Coast
2 Guard Academy in 1953, but technically, I was in
3 the Coast Guard when I entered the Coast Guard
4 Academy, in 1949. So that would make 33 years.

5 Q Would you give the jury an idea of the
6 positions that you've held while you were in the
7 Coast Guard.

8 A Yes, sir. I've held a number of positions.
9 I'll run through them. I spent three years on
10 ships out of New York, 327 foot vessels. These
11 were the largest ones the Coast Guard had at the
12 time. From there I went to commanding officer of
13 the Loran station in Cape Sarikof (ph), Alaska.
14 That was my first tour in Alaska.

15 From there I went down to Alameda, California,
16 where I was the base engineer and industrial
17 manager. Then I went to my first marine safety
18 assignment in New York, starting in 1958 and
19 running for four years.

20 From there I came back to Alaska again in the
21 marine safety field from 1962 to 1965. From 1965
22 until 1967 I went back to sea again aboard a
23 Coast Guard cutter -- 327 foot cutter, as the
24 engineer officer and the ship was based in
25 Alameda, California.

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1967, 1968 I went to Yorktown, Virginia, and was the officer-in-charge and an instructor at the Merchant Marine Safety School. The executive officer became vacant and I was moved up into that. And so I spent two years as executive officer of the base.

Then I went to marine inspection again in Seattle, Washington for four years -- for five years, and that's where I went to law school, or started it. From there I went to Washington, D. C. where I was the executive secretary of the Marine Safety Council.

The Marine Safety Council is the organization in the Coast Guard that handles the promulgation and overview of Coast Guard regulations. In other words, if a regulation is to be issued by the Coast Guard, my office was the one that handled it on a day-to-day basis.

From there I went to commanding officer of the Marine Safety Office of Portland, Oregon. That assignment involved not only Captain of the Port authority, but the officer-in-charge of marine inspection.

Officer-in-charge of marine inspection is an antiquated term, but it's the senior person that

1 is responsible for the safety of inspection and
2 licensing and investigation of marine ships.

3 Q In that particular port?

4 A In that particular instance it was the state
5 of Oregon and the southern half of the state
6 Washington. That was the area.

7 Q Now, would you explain to the jury what the
8 term "Captain of the Port" is?

9 A Captain of the Port is a term of an individual
10 who has the authority to regulate shipping in a
11 port subject to the regulations. In other words,
12 his power is restricted by the regulations. But
13 basically he can make vessels move. He can
14 require vessels not to move. He does inspection
15 of certain operations of vessels, primarily while
16 they are either anchored or at dock. The
17 handling of hazardous and dangerous cargos within
18 the port. These are the responsibilities that he
19 has.

20 If there is a fire or an accident, he may be
21 the one who is in charge of the Coast Guard
22 activities, firefighting, if the Coast Guard is
23 involved in it. They usually are. But he would
24 oversee the safety aspect.

25 Q Would you tell the jury what your experience

1 was in the Coast Guard specifically dealing with
2 Marine casualty investigation?

3 A Yes, sir. When I was in New York was the
4 first time I was involved casualty investigation.

5 Q When was this?

6 A That basically was back in 1958 through 1962.
7 I was assigned to the casualty investigation
8 branch. We had probably 10 or 12 officers
9 assigned to it. The senior officer who was in
10 charge of the investigations was an attorney.
11 There was another attorney in the office. The
12 rest of us were not attorneys. And I broke in as
13 an investigator underneath them. I spent over a
14 year in that particular aspect in the New York
15 office.

16 Q What were you doing during that time?

17 A Primarily investigating misconduct of merchant
18 seamen, and when they occurred, casualties to
19 vessels. And there were several major casualties
20 while I was there.

21 Q When you say investigating casualties of major
22 vessels, what do you mean?

23 A We wanted to determine what the cause was.
24 Whether there was any negligence by the people
25 involved. In most cases the officer that's on

1 watch on the bridge, if it's a navigational
2 problem, that could be the master and is in
3 certain cases. It could be the pilot, if there
4 was a pilot aboard.

5 Q Did it also have to do with any problems in
6 the Coast Guard's navigational system? Would you
7 investigate things like that?

8 A There would be a person, not from my office;
9 from the navigation office, who would go out and
10 check to see if the aids in the area were
11 operating properly.

12 Q After your four years in New York, where did
13 you next get experience in marine casualty
14 investigation?

15 A I came here to Juneau, Alaska. At that time
16 the Juneau office was the only marine safety
17 office in Alaska, so we covered all of Alaska.

18 Q Would you explain what you did there?

19 A Because the office was a small office, we did
20 everything. In other words, we issued licenses,
21 including grading pilots for pilotage license in
22 Alaska. We would investigate casualties. We
23 would inspect the vessels, the Alaska ferries,
24 other vessels that were in the area. And I think
25 I mentioned, investigate casualties.

1 Q Where did your travels take you investigating
2 casualties out of Juneau?

3 (1487)

4 A Well, most of it was in southeast Alaska. I
5 got up into the Bering Sea several times. I was
6 at Valdez several times. And basically it would
7 take us wherever there was a commercial vessel
8 operating that required Coast Guard inspection.

9 Q And when did you complete your tour there?

10 A In Alaska, 1965.

11 Q When is the next time you were involved in
12 marine casualty investigation with the Coast
13 Guard?

14 A When I was the officer in charge of the school
15 in Yorktown, and that would have been 1967. I
16 was the one who taught the course in
17 investigation. In other words, I taught the
18 other officers basically how investigations were
19 to be conducted. I think it was about that time
20 that I also wrote a book on investigations.

21 Q What was that book that you wrote.

22 A I wrote a -- I'm sorry, it was my next tour of
23 duty. It was when I was in Seattle. It was a
24 book of some 170 pages, I believe. It was an in-
25 house book that was to be used by Coast Guard

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personnel in investigating casualties, and acts of misconduct by certain seamen.

Q Now after leaving Yorktown as an instructor, when was the next time that you worked in the area of marine casualty investigation?

A After leaving Yorktown, sir? When I went to Seattle. In Seattle -- I was there for five years starting in 1970.

Q What were you doing there?

A The first year I was in charge of licensing. We had a staff of two officers and several civilians. We issued licenses and merchant mariner documents to all merchant seamen that were eligible for them.

The next three years I was in charge of investigations. We had a staff of probably five or six officers at that time who were doing investigations. And the last year I was in charge of the inspection of vessels.

Q Now, you retired from the Coast Guard when?

A 1982, May.

Q And did you continue to be involved in marine casualty investigation after retiring from the Coast Guard?

A Yes, sir.

1 Q Would you tell the jury what your experience
2 was after you retired in this area?

3 A Well, I've been involved in the investigation
4 of a number of casualties ranging from
5 recreational boats to major vessel casualties. I
6 don't have the exact number of breakdown of the
7 type, but I can tell you those that I've done --
8 of major vessels that I've done reconstructions
9 on.

10 Q Would you tell the jury that?

11 A The first acquaintance that I had with a major
12 investigation of a marine casualty was the Andrea
13 Doria-Stockholm. Now, these were two famous
14 ships that collided north of New York. The Coast
15 Guard was not involved in them, but the analysis
16 of the course recorder was something that I
17 became interested in and talked to the Sperry
18 people about it and to the authors of two books
19 that wrote what caused the casualty. Again,
20 there was no official Coast Guard involvement in
21 that.

22 However, in New York the Santa Rosa, a
23 passenger ship, collided with the Valchem (ph), a
24 freighter, and later the Constitution, another
25 passenger vessel, collided with the Gelanta (ph).

1 I was involved with both of those. I was not the
2 senior investigator in them, but I was involved
3 in the reconstruction of the track lines of both
4 vessels before and up to the collision.

5 When I was stationed in Seattle there were
6 three major collisions in the Strait of Juan de
7 Fuca. These were all in fog, and I don't
8 remember the names of the vessels except for one.
9 One was the American flag vessel C. E. Dant. But
10 all of them involved a collision between an
11 inbound and an outbound vessel. And it required
12 a reconstruction of the track lines leading up to
13 them.

14 The next one was the grounding of the Mobil in
15 the Columbia River, which was a tanker. The Ming
16 Linear (ph), a freight vessel that grounded in
17 the Columbia River. The Taska (ph), a foreign
18 freighter that collided with a fishing vessel and
19 sank it off of northern California in the mid-
20 1986s. The Arco Anchorage, which was a tanker
21 that went aground in December of 1985 in Port
22 Angeles, Washington. And there was a significant
23 spill of oil in that case.

24 That vessel was operated under a pilot at the
25 time and a reconstruction was done and a hearing

1 held at which I testified. I have the current
2 one and there is one other that I'm just
3 starting.

4 Q Now, included in the marine casualty
5 investigations have you had to look at the image
6 that was sustained by the vessels involved in
7 the...

8 A Yes, sir. One of the jobs in the Coast Guard
9 course is the overseeing of the repair of
10 vessels. So whenever a vessel sustains damage,
11 if it is an American flag vessel, the Coast Guard
12 inspector will be involved.

13 Q The investigator and the inspector may work
14 hand-in-hand; they may not work hand-in-hand.
15 But both of them -- and I've had both jobs --
16 will look at the damage and the inspector isn't
17 particularly interested in caused it, or an
18 analysis of it, but he does it anyway for his own
19 information. The investigator is, of course, and
20 that is part of his investigation, is analyzing
21 the damage when it's in drydock.

22 Q And have you been also involved in the salvage
23 operations that have gone on after tankers have
24 been involved in accidents or collisions?

25 A Not really, no.

1 Q Now, would you tell the jury, have you been
2 asked to consult in your professional -- in your
3 consulting work? What type of consulting work do
4 you do now?

5 A Marine safety.

6 Q Have you been asked to testify in the past?

7 A Yes, sir.

8 Q Can you give the jury an idea of the number of
9 times you've been required to testify? An
10 approximation?

11 A Okay. In all of the cases that I've been
12 involved with since I retired, I may have
13 testified in between 30 and 35 cases.

14 Q And prior to that were you required to testify
15 when you were in the Coast Guard?

16 A No, sir. Coast Guard personnel very
17 infrequently testify, and then only as a fact
18 witness. I can only remember once while I was in
19 the Coast Guard that I testified and it was in
20 Juneau, Alaska.

21 Q The work that you have done as consulting,
22 have you done primarily plaintiff work or
23 primarily defendant work, or what?

24 A I've done about 60% plaintiff work, which
25 includes several criminal cases. I'm sorry, 60%

1 plaintiff and 35% defendant. That doesn't add up
2 to 100%. 5% is non-litigation work. And Of the
3 defense cases, I've represented -- I've been
4 involved in one criminal case.

5 Q Since being involved in your private
6 consulting firm, have you been qualified as an
7 expert in other court jurisdictions?

8 A Yes, sir.

9 Q Would you give the jury an idea of how many
10 times that has occurred?

11 A It occurs every time that you appear as an
12 expert. Marine cases are primarily held in
13 federal court. So the federal courts that I have
14 been qualified as an expert is Anchorage,
15 Seattle, Portland, San Francisco, and Hawaii.
16 And I think that's all the federal courts.

17 Q You indicated you were asked to provide
18 services for the state of Alaska in this matter.
19 When were you asked to do this?

20 A I don't remember the precise date. I remember
21 it was within a few days after the Exxon Valdez
22 went aground. It would have been late March.

23 Q What were you asked to do at that time?

24 A I was asked to come up to Alaska and board the
25 vessel. Assist in the investigation with the

1 view of doing a reconstruction of the track line
2 of the vessel.

3 Q Are you being paid for your services?

4 A Yes, sir.

5 Q Would you tell the jury what that contract
6 entails?

7 A That's a contract to be paid at the rate of
8 \$95.00 an hour, plus expenses.

9 THE COURT: Mr. Cole, this might be a good
10 time for us to take a break before you get into the
11 substantive testimony.

12 MR. COLE: Yes.

13 THE COURT: We'll take our next break, ladies
14 and gentlemen. Remember my instructions not to discuss
15 the matter or form or express any opinions.

16 THE CLERK: Please rise. This court stands in
17 recess subject to call.

18 (Off record - 12:00 p.m.)

19 (On record - no time noted)

20 (1990)

21 (Jury not present)

22 THE COURT: Before we get the jury in here,
23 Mr. Russo kindly complied with the court's order and
24 gave me a copy of some documents. One is a letter to
25 Mr. Russo from George Patkin, with an attachment -- two

1 numbered paragraphs on it and then another attachment
2 that indicates, "as recognition of low level alcohol
3 intoxication from speech signal"; prefixed document.

4 I reviewed that in chambers. I told Mr. Russo
5 and Mr. Madson, this is the kind of document that I
6 would normally provide over to the other side. Mr.
7 Madson -- I said, however, if you object, we can put it
8 on the record. Mr. Madson indicated some sort of
9 objection to me turning this over to Mr. Cole. So you
10 can put that on the record at this time, Mr. Madson.

11 MR. MADSON: Well, first of all, Your Honor,
12 Rule 16 says that -- it relates only to reports from
13 experts which may be disclosed to the prosecution, upon
14 order of the court. First of all, this is not a
15 report.

16 Secondly, it's from experts that you intend to
17 use at trial. We don't know if we intend to use him or
18 not, since he was retained and consulted only because
19 the state said -- they intended to rely upon -- or, he
20 was expert in this unknown big field of recognition of
21 intoxication by spectrograph.

22 So, as a result, we contacted him. The letter
23 he wrote back, the one the court has there, is in
24 response to Mr. Russo's conversations with him in which
25 he asked him opinions, and also whether or not he could

1 do or could not do certain things. That's certainly
2 within the scope of the attorney privilege. That's a
3 work product. It isn't a report.

4 At that time he said, "Here's my fees; here's
5 basically what I think I can do." He hasn't done it.
6 We don't know if it can be done. And we don't even
7 know if we intend to use him or not. He's a back-up,
8 in case the court decided to go with the Fry hearing or
9 with a hearing on the merits on this. So it doesn't
10 come at all within Rule 16.

11 THE COURT: All right. Mark this. Exhibit 5,
12 is it?

13 THE CLERK: Yes, sir.

14 THE COURT: Okay. We marked it for
15 identification for the record and we will keep it as
16 part of the record as Court's Exhibit 5. Your
17 objection is noted.

18 Mr. Cole, you can approach the bench. I'm
19 overruling the objection. And if we do end up having a
20 Fry hearing on this, this will be helpful for everybody
21 to have in advance of the Fry hearing that will prevent
22 any unnecessary delays on the Fry hearing, too.

23 MR. MADSON: Then, Your Honor, I think the
24 same ruling should apply to the state. We should be
25 entitled to every bit of correspondence, phone notes

1 and everything else that they've had with any expert,
2 whether or not they intended to call them or not.

3 THE COURT: Okay. Your request is denied.

4 Are we ready now with the jury?

5 MR. COLE: Judge, I just want to mention that
6 there has been a stipulation reached between the
7 parties, and I'll approach the court. It just is to
8 business records. The information contained in this
9 packet is business records.

10 THE COURT: Should we have this marked as one
11 exhibit, then; state's exhibit?

12 MR. COLE: There is three exhibits there.

13 THE COURT: Have they been marked?

14 MR. COLE: No, they have not.

15 THE COURT: What would be the next three
16 numbers in order?

17 THE CLERK: 151, 152, and 153.

18 THE COURT: Is there a stipulation as to
19 admissibilities of these documents, 151, 152 and 153?

20 MR. MADSON: Not admissibility, Your Honor.
21 Just that they're business records.

22 THE COURT: Okay. So the hearsay objection is
23 overcome?

24 MR. MADSON: That's right. They are business
25 records, and we have so stipulated.

1 THE COURT: So we don't have a hearsay
2 objection. There may be a relevancy objection.

3 MR. MADSON: That's correct. There are other
4 objections.

5 THE COURT: Are we ready now with the jury?

6 MR. COLE: Yes. We would just like to take
7 that up at some point. We don't have to do it right
8 now, we're ready to go.

9 THE COURT: Just so, Mr. Madson, you
10 understand my ruling. I have ordered the state to
11 comply with Criminal Rule 16. If you have any specific
12 examples where they are not complying, if you bring
13 them to my attention, I will issue some remedial
14 orders. Your broad request, every letter, note,
15 conversation, and things like that, will be in general,
16 denied. But if you have specific requests in the
17 future, please bring them to my attention and I will
18 address them as they come up. But broad requests like
19 that will be denied.

20 MR. MADSON: Well, specifically, all
21 correspondence, Your Honor. Whether -- the report or
22 not. That's what our letter was, and I think they must
23 have some in their files, too.

24 THE COURT: Mr. Cole, let's address that now.
25 This witness, for example, Mr. Greiner, has been going

1 over a vitae of some sort of his credentials. Did you
2 have that available to you before this witness was
3 called?

4 THE COURT: And if I did, then I provided
5 copies of all the curriculum vitae of the witnesses
6 that we received, and that was given to them when we
7 gave them notice of our expert witnesses.

8 THE COURT: All witnesses that you intend on
9 calling as expert witnesses, you understand you are
10 under the order of the rule in this court to produce
11 any summaries, letters, notes of conversations that
12 reflect what the witness would testify to. Any
13 documentation the witnesses provided you, including any
14 publications that the witness has created; any books
15 he's written; anything he's provided you that would go
16 to his credentials as an expert, do you understand
17 that?

18 MR. COLE: I have one that I received last
19 night. It's the letter from Captain Beevers, and I
20 will provide that today.

21 THE COURT: Okay. Very well. Let's bring the
22 jury in.

23 Mr. Chalos, these are extra copies. I don't
24 need these, of the proposed witness Patkin.

25 (Jury present)

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THE COURT: You may resume, Mr. Cole.

MR. COLE: Thank you, Your Honor.

Q (Captain Greiner by Mr. Cole:) Captain Greiner, after being hired by the state of Alaska in this manner, what evidence have you reviewed prior to coming into court?

A I reviewed a large number of things. I have a table of contents of information that was sent to me by your office. It involves the NTSB transcripts. There are exhibits, with the exception that some of the exhibits were not enclosed, and they were listed as not available. Certain troopers' statements. Certain statements taken by the Coast Guard.

I've gotten vessel records, maneuvering data off of the bridge; Bell log; Bell logger; course recorder; log books. I don't know how much detail you want me to go in.

MR. CHALOS: Judge, may we approach the bench for a second?

(2443)

(Whispered bench conference as follows:)

MR. CHALOS: (Indiscernible - whispering).

THE COURT: How do you know if you haven't seen it?

1 MR. CHALOS: (Indiscernible - whispering)
2 THE COURT: Has he been given (indiscernible -
3 whispering).
4 MR. CHALOS: (Indiscernible - whispering).
5 THE COURT: When the time comes for cross
6 examination, I will let you look at that list.
7 However, at this time he's just listing the things that
8 he's reviewed that the state has provided him, which I
9 understand you have already.
10 MR. CHALOS: (Indiscernible - whispering).
11 THE COURT: Why don't you have him go through
12 everything that he received and see if there's
13 something, maybe, you haven't got.
14 (End of whispered bench conference)
15 (2507)
16 Q (Captain Greiner by Mr. Cole:) In addition to
17 this information, did you visit the Exxon Valdez
18 at any time?
19 A Yes, sir. I visited it three times.
20 Q Would you tell the jury when you visited the
21 Exxon Valdez?
22 A The first time, I believe was the 2nd of
23 April. The Exxon Valdez at that time was still
24 on Bligh Reef. The second time -- I believe it
25 was in June. I don't have a specific date. At

1 that time the vessel was at anchor in the bay of
2 Naked Island. And the third time was in
3 September when the vessel was in drydock, and
4 that was in San Diego.

5 Q Why did you go to the Exxon Valdez on the 2nd
6 -- April 2nd?

7 A I went there in company with an attorney. I
8 think it was Trooper Fox. It was one of the
9 troopers. We went there to obtain records from
10 the vessel under a subpoena, and to examine the
11 vessel in general. Just get a general feel for
12 the vessel.

13 Q And in June of 1989 why did you go to the
14 vessel that day?

15 A We did a test on the rudder. I was interested
16 in how the rudder behaved and specifically the
17 steering console. Whether, for instance, if it
18 was in automatic pilot, would an alarm sound or
19 would the rudder turn if he turned the wheel.
20 And that was the primary reason. In both cases we
21 oriented ourselves with regard to the equipment
22 on the bridge.

23 Q And the third time you visited the Exxon
24 Valdez, that was in drydock?

25 A Yes. That was down in San Diego in the

1 graving dock, and we took photographs. Hugh
2 Ackroyd (ph), a photographer from my area, and I,
3 went down in company with Bill Milwee, an
4 attorney from your office, and an attorney
5 representing Exxon, Bill Vorus. I think that was
6 all of us that were there.

7 We inspected the bottom, looked at it,
8 analyzed it and photographed it.

9 Q Would you explain how a vessel the size of the
10 Exxon Valdez gets placed in drydock?

11 A In this particular dock, which is a graving
12 dock -- there are basically two types of drydock.
13 One is a floating drydock where they flood the
14 dock and sink it, and then put the vessel on it.
15 A graving dock is a dock that is built into the
16 earth. In other words, it doesn't go up and
17 down. The gates are closed; they fill it with
18 water; they open the gates; they move the vessel
19 in and close the gate and then pump the water
20 out, as opposed to a floating drydock, where they
21 pump the water, not out of the water surrounding
22 the vessel, but out of the dock itself and it
23 floats up and lifts the vessel with it.

24 Q Now, I would like to talk about the damage
25 that you observed to the Exxon Valdez. Would you

1 tell the jury the damage that was done to the --
2 well, let's begin this way: (Pause) I'm showing
3 you a model. Do you recognize what has been
4 identified as Plaintiff's Exhibit 154?

5 A Yes, sir. It appears to be a model of the
6 Exxon Valdez.

7 Q And as you saw it, is that a fair and accurate
8 representation, to a smaller scale, of the Exxon
9 Valdez?

10 A Yes, sir. It's missing some of the smaller
11 things, like rails and things like that, but it
12 appears, to my recollection, and I compared it
13 with a photograph earlier. It appears to be a
14 fair representation.

15 MR. COLE: I would move for the admission of
16 what has been identified as Plaintiff's Exhibit 154.

17 MR. CHALOS: Your Honor, may I have a short
18 voir dire on this?

19 THE COURT: All right.

20 VOIR DIRE EXAMINATION OF CAPTAIN GREINER

21 BY MR. CHALOS:

22 Q Mr. Greiner, you say that this represents a
23 fair and accurate model of the Exxon Valdez?

24 A As I recall it, yes, sir.

25 Q If you look on deck, it omits, does it not,

1 the pressure vacuum valves?

2 A Yes, sir.

3 Q And it omits the IG system valves?

4 A The valves themselves, yes, it does. The IG
5 system is here, but not the valves.

6 Q And it omits the rudder?

7 A No, sir, the rudder is here (indicating).

8 Q Oh, sorry, I was turning the wrong way. As a
9 matter of fact, from where I'm standing here, I
10 don't see any of the inert gas system on there at
11 all, is that true?

12 A I believe that this is part of the inert gas
13 system right here on the right hand side and the
14 line, but...

15 Q You're not sure.

16 A I'm not sure on the -- whether it has that
17 much detail. As I indicated, some of the detail
18 is missing, but what is here is a fair
19 representation.

20 Q Well, what you are saying is, it's a fair
21 representation of the hull, really, not the
22 vessel itself?

23 A No. I mean, there is a super structure and
24 there is piping on deck, and there are winches
25 and things like that that are -- there are

1 manifolds of piping.

2 Now, what I said is, that everything isn't
3 there. And I gave you an example that the rails
4 weren't there. In fact, all -- you pointed out
5 some other things that aren't there, that's true.
6 Everything isn't there.

7 MR. CHALOS: Judge, the pressure vacuum valves
8 and the inert gas system are, and have been, important
9 elements of this case. I would think that any model
10 that omits them, being represented as being a fair and
11 accurate model of the ship would not be accurate. And
12 for that reason I would ask that it not be admitted
13 into evidence as a fair and accurate representation of
14 the vessel.

15 THE COURT: I think you pointed out some of
16 the absences and that's made clear. You could argue
17 that, but I overrule your objection. The model comes
18 in.

19 EXHIBIT 154 ADMITTED

20 DIRECT EXAMINATION OF CAPTAIN GREINER, CONTINUED

21 BY MR. COLE:

22 Q Now, would you point out for the jury where
23 the center cargo tanks are on the bottom of this
24 vessel?

25 A I'm not sure what you mean by center cargo

1 tanks, because -- are you talking about the
2 longitudinal ones?

3 Q Yes.

4 A The center tanks are down the center of the
5 vessel. Basically, there are three tanks across.
6 They have the center tanks, the port tanks, and
7 the starboard tanks.

8 Q And which one is the starboard side and which
9 is the port?

10 A Starboard side is the right side. The port
11 side is the left side. Port and left have the
12 same number of letters in them. That's the way I
13 remembered it when I started.

14 Q Now, will you describe for the jury the damage
15 that you observed to the center cargo area -- the
16 center line of the vessel?

17 MR. CHALOS: Your Honor, I'm going to object
18 to the word "damage", because there's been evidence
19 that some of the plating was cut while the vessel was
20 in route to San Diego. I wouldn't consider that to be
21 damage. I think the more proper question is, just have
22 him describe what he saw, and characterize it as
23 damage.

24 MR. COLE: Damage just means damage, judge. I
25 don't see anything improper by using that language.

1 It's damage to the bottom of the vessel.

2 THE COURT: Will you be able to distinguish
3 between damage that may have arisen as a result of the
4 grounding and damage which arose as a result of
5 repairs?

6 A No, sir.

7 THE COURT: I'll let you cross examine the
8 witness on that. I'm going to let the witness testify
9 as to what he saw.

10 Q What did you see down the center line of the
11 vessel?

12 A Basically, I seen the front of the bow. The
13 damage started just a little to the left of bow
14 and went down through the centerline and diagonal
15 and ended somewhere in this area here
16 (indicating).

17 I would like to explain that from here aft --
18 about the super structure aft you have
19 engineering compartments and such like that. The
20 tanks at this area here, and I'm talking about
21 forward of the house, there is a pumproom in
22 there, but for all intents and purposes, this is
23 all tanks and this is machinery or living area in
24 here.

25 The damage ended on the starboard side prior

1 to reaching the pump room which is immediately
2 forward of the engine-room.

3 Q You could set that down there. I'm showing
4 you what's been marked for identification as
5 Plaintiff's Exhibit 103. Do you recognize that
6 diagram?

7 A Yes, sir, I do.

8 Q And what is that a diagram of?

9 A That is a diagram of the portion of the Exxon
10 Valdez forward of the engine-room. In other
11 words, the portion from here forward
12 (indicating). And I'm pointing to the area of
13 the exhibit 154, which is where the
14 superstructure -- the forward part of the
15 superstructure.

16 Q And there are numerous lines running
17 vertically across this diagram. What are those?

18 A Those are frames.

19 Q What is a frame?

20 A These are structural members. In other words,
21 the vessel is made up of plates and structural
22 members. It's a structural member that runs
23 transfers or from side to side on the vessel.
24 There are also some longitudinal, which means
25 they run the length of the vessel.

1 Q And there is certain indications of squiggly
2 lines and such lettering that's on this. What is
3 that?

4 A These are the indications of damage placed on
5 them for the salvage crew. They came from
6 divers. In other words, it came from information
7 that was acquired from divers during the salvage
8 operation. The drawing itself was obtained from
9 the salvage master, Mickey Lites (ph).

10 Q Did the damage that you see drawn on this,
11 correspond with the damage that you observed when
12 you looked at the Exxon Valdez at drydock?

13 A The damage at drydock was probably more
14 expensive than is on this exhibit. Part of that
15 is because additional plates were missing; part
16 of it is because this was done as an underwater
17 survey, and there are things that divers just
18 don't pick up.

19 Q But to the extent that it notes the damage,
20 does that fairly and accurately represent what
21 you saw?

22 A Yes, sir.

23 Q Now, there are a number of numbers with arrows
24 placed across this damaged diagram. What are
25 those?

1 A These are numbers that I placed on there that
2 represent the photograph that was taken at that
3 place. In other words, there is a two-digit --
4 there's a number, a dash, and another number.
5 The first number is the roll of the film. The
6 second number is the negative of the film. The
7 arrow is the direction the camera was facing at
8 that point.

9 Q And do those numbers correspond to pictures
10 that you brought into court here today?

11 A Yes, sir, they do.

12 Q How do they correspond to those pictures?

13 A The photograph that has the same number on the
14 back of it, as is shown on Exhibit 103, is the
15 photograph that was taken where the number
16 appears on Exhibit 103. In other words, the back
17 of the photograph will have 8-10 on it, and if
18 you will look at Exhibit 103 you will find 8-10,
19 and that is where that photograph was taken.

20 Q And at the bottom of the diagram there are
21 indications of damage that was done to the
22 starboard side. Would you explain what that was?

23 A The starboard side sustained substantial
24 damage as a result of the tide going out. In
25 other words, when the tide went out and the

1 vessel set heavier on it, it' squashed,
2 basically. And this is illustrative of the
3 damage that was noted in the very right hand side
4 of the vessel, the starboard side of the vessel.

5 Q And was that damage observed by you when you
6 inspected the Exxon Valdez at drydock?

7 A Yes, sir, it was.

8 MR. COLE: Your Honor, I would move for the
9 admission of what has bene identified as Plaintiff's
10 Exhibit 103.

11 MR. CHALOS: Your Honor, may I have a short
12 voir dire on this?

13 THE COURT: Short. Yes.

14 VOIR DIRE EXAMINATION OF CAPTAIN GREINER

15 BY MR. CHALOS:

16 Q Mr. Greiner, you say that when you viewed the
17 ship down in San Diego, that the damage you
18 observed was more extensive than the damage that
19 is shown in this diagram?

20 A That's correct.

21 Q Because there had been plates cut away?

22 A Yes, sir.

23 Q And you didn't prepare this particular
24 diagram?

25 A I didn't prepare the diagram itself. I

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believe Mr. Hudson, who is sitting in the courtroom, prepared it.

Q No. My question was, you didn't prepare it?

A I prepared the numbers on it, not the diagram itself.

Q So you don't know if that diagram accurately reflects the condition of the vessel at the time that the diagram was made?

A No, sir. As I indicated, it probably didn't, because everything that -- all the damage couldn't have been picked up and put on there. It's a fair representation of it, but it isn't down to the little inch and...

Q But you don't have any personal knowledge of whether this diagram represents the condition of the vessel at that time?

A You're correct. I don't.

MR. CHALOS: Your Honor, I don't think this witness can attest to the accuracy of this diagram. I move that it be kept out.

THE COURT: Objection overruled. It's admitted. There is sufficient foundation of its admission.

EXHIBIT 103 ADMITTED

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DIRECT EXAMINATION OF CAPTAIN GREINER, CONTINUED

BY MR. COLE:

Q If you wouldn't mind picking up that pointer right there.

MR. CHALOS: Your Honor, we would ask that it be moved back so we could see it as well.

THE COURT: May if you move that TV screen out of the way you could get back and forth between the counsel table, too.

Can you see it there, Mr. Chalos?

MR. CHALOS: Yes, I can see it now.

THE COURT: Will counsel approach the bench, please?

(3468)

(Whispered bench conference as follows:)

THE COURT: Mr. Chalos, I recognize that neither one of you are going to agree with my rulings all the time. That's part of the way this is (indiscernible - whispering). However, it's very unprofessional for you to turn around and you and Mr. Russo engage in conduct that expresses your displeasure to my rulings. I noticed it several times. I don't want to bring it up in front of the jury, but it's not necessary.

(End of whispered bench conference)

1 Q (Captain Greiner by Mr. Cole:) Captain
2 Greiner, can you indicate on this diagram where
3 the bow is and where the aft end is?
4 A Yes, sir. This is the bow, the front end of
5 the vessel. And the stern -- the end of the
6 vessel is not shown on here. If you remember, I
7 indicated that this part here represented this
8 part of the vessel here. So the diagram shows
9 the portion of the vessel forward. I've been
10 referring to Exhibit 154.
11 Q Would you show the jury where the forepeak of
12 this vessel is?
13 A Yes, sir. It's right here (indicating).
14 Q And which side is the starboard side and which
15 side is the port side?
16 A The starboard side is down; the portside is
17 up. You are basically looking down on the vessel
18 like this (indicating).
19 Q Now, would you point out to the jury where the
20 damage that was done to the center line began?
21 A Damage to the center line began both to the
22 left and right or port and starboard of the
23 center line, right in this area here
24 (indicating). The bow, of course, it's right
25 here in the forepeak area.

1 Q And where did it go from there?

2 A It moved aft, slightly diagonal across the
3 vessel. In other words, let me lay my pointer
4 down as to the center line of the damage that I'm
5 now describing. And that basically is it. You
6 can see it starts center of the center line, but
7 a little to the left, as well as to the right.
8 And it ends all on the starboard side aft.

9 Q Now, would you describe -- is there a way that
10 you can tell that all of that damage was done --
11 is there any indications that that damage was
12 done on a continuous period of time? You know,
13 at the same time?

14 A Let me characterize the damage. The damage
15 was done by running over a very solid object,
16 assumed to be a rock, or rocks, that started
17 here, moved aft, and passed behind the vessel.
18 In other words, the object or objects that made
19 this tearing of the bottom of the hull, ended up
20 behind the vessel before it was finally stopped.

21 Q And if a person was looking in this area right
22 in here on the bottom of the vessel, what --
23 would you describe what he would see going down
24 the vessel?

25 A In this area here, if you are standing just

1 forward of the vessel, and you are looking aft,
2 basically you see what -- I guess I could
3 describe it as a tunneling effect. In other
4 words, you can see the damage -- now, looking in
5 this direction and looking aft, that the damage
6 is higher in the center than it is on either
7 side.

8 Q Would you step up to the board and draw a
9 picture of what the -- an outline.

10 A Yes, sir. (Pause)

11 Q Just describe for them that tunnel effect.

12 A This is looking from the bow, the forward part
13 of the ship, aft. And the damage appeared in
14 this pattern. Obviously it was torn, and such.
15 But you could look down there and you could see a
16 tunnel. Not a high tunnel, but a tunnel effect,
17 to indicate where the damage -- or, the rock had
18 passed. Actually, it's the reverse. The rock
19 stood still. Where the vessel passed over the
20 rock.

21 Q Now, what damage did you observe at the --
22 toward the starboard end toward the stern at this
23 end?

24 A There were score marks running fore and aft in
25 the after part down here. Just forward of that

1 the hull was torn -- the plates of the hull were
2 torn. But at the very end it was scratch marks
3 from the rock.

4 Q What does "scored" mean?

5 A Scored means, basically when an impervious
6 material has a ridge in it that's caused by
7 another object.

8 MR. COLE: Judge, I'm going to ask at this
9 time if we could move a little bit further. I'm going
10 to be using these pictures to show the damage that is
11 set out in this diagram.

12 THE COURT: Assuming they go into evidence,
13 that will be okay.

14 MR. COLE: We'll go through that right now.

15 Q (Captain Greiner by Mr. Cole:) Captain
16 Greiner, I'm showing you what has been marked for
17 identification as Plaintiff's Exhibit 133. Do
18 you recognize that photograph?

19 A Yes, sir, I recognize the photograph.

20 Q What is that a photograph of?

21 A This is a photograph of the Exxon Valdez, a
22 portion of it.

23 Q Where is this photograph taken?

24 A The photograph is taken -- let me look at the
25 number on the back of it again. It's taken aft

1 looking forward. If I might suggest, I think
2 that when the tags were put on them they were put
3 in the reverse order from what I had them before.
4

5 (Pause)

6 Q Showing you what has been marked for
7 identification as plaintiff's Exhibit 125. Do
8 you recognize that document?

9 A Yes, sir.

10 Q What is that a diagram of?

11 A That's a photograph of the Exxon Valdez
12 forward looking aft.

13 Q Is that an accurate representation of the
14 Exxon Valdez in that particular point, as you
15 observed it?

16 A Yes, sir, it is.

17 Q I'm showing you what has been marked for
18 identification as Plaintiff's Exhibit 126. Do
19 you recognize that photograph?

20 A Yes, sir, I do.

21 Q What is that a photograph of?

22 A It's a photograph of the Exxon Valdez. The
23 bottom of it, the forward section is photograph
24 9-7.

25 Q And where is that taken?

1 A 9-7 is taken right on the center line right
2 here.
3 Q Does that photograph accurately represent what
4 you observed when you saw the Exxon Valdez in
5 drydock?
6 A Yes, sir, it does.
7 Q Showing you what has been marked for
8 identification as Plaintiff's Exhibit 128. Do
9 you recognize that photograph?
10 A Yes, sir, I do.
11 Q What is that a photograph of?
12 A A different portion of the bottom of the Exxon
13 Valdez.
14 Q Which portion of that was that?
15 A This is photograph 7-27, which was taken here
16 and looking aft.
17 Q Does that accurately reflect the damage you
18 observed when you were at that point?
19 A Yes, sir, it does.
20 Q Showing you what has been marked for
21 identification as Plaintiff's Exhibit 127. Do
22 you recognize that?
23 A Yes, sir, I do.
24 Q And what is that a photograph of?
25 A The bottom of the Exxon Valdez.

1 Q And where is that photograph taken?
2 A That photograph was taken at this location
3 right here, looking aft.
4 (Tape: C-3640)
5 (000)
6 Q And does that accurately reflect the picture
7 that you observed from that particular point that
8 day?
9 A Yes, sir, it does.
10 Q Showing you what has been marked for
11 identification as Plaintiff's Exhibit 129. Do
12 you recognize that photograph?
13 A Yes, sir.
14 Q What is that a photograph of?
15 A That's a photograph of the Exxon Valdez, and I
16 happen to be in the photograph.
17 Q Where was that photograph taken?
18 A That was taken at this location here, which is
19 just to the right of the center line in number
20 three center tank.
21 Q Does that accurately reflect what you saw that
22 day in that particular point?
23 A Yes, sir, it does.
24 Q Showing you what has been marked for
25 identification as Plaintiff's Exhibit 130. Do

1 you recognize that photograph?

2 A Yes, sir, I do.

3 Q What is that a photograph of?

4 A That's a photograph of the bottom of the Exxon
5 Valdez.

6 Q And where was that taken?

7 A That was taken right here facing aft.

8 Q Is there an individual in that picture?

9 A Yes, sir, there is.

10 Q Who is that individual?

11 A That's the attorney for Exxon.

12 Q Showing you what is -- does that picture
13 accurately reflect what you observed there?

14 A Yes, sir, it does.

15 Q Showing you what has been marked for
16 identification as Plaintiff's Exhibit 131. Do
17 you recognize that exhibit?

18 A Yes, sir, I do.

19 Q What is that a photograph of?

20 A The bottom of the Exxon Valdez.

21 Q And would you indicate to the jury where that
22 photograph was taken?

23 A That photograph was taken right here, just
24 about on the center line, and it was taken facing
25 aft.

1 Q Does that accurately represent the image that
2 you observed when you were at that place?
3 A Yes, sir, it does.
4 Q Showing you what has been marked for
5 identification as Plaintiff's Exhibit 132. Do
6 you recognize that photograph?
7 A Yes, sir, I do. It's a photograph of the
8 Exxon Valdez bottom.
9 Q And where was that photograph taken?
10 A That was taken right here, and, again, it's
11 facing aft.
12 Q And does that accurately reflect the damage
13 that you observed when you were in that position?
14 A Yes, sir, it does.
15 Q Now, finally showing you what has been
16 identified as Plaintiff's Exhibit 133. Do you
17 recognize that photograph?
18 A Yes, sir, I do.
19 Q And what is that a photograph of?
20 A That's a photograph of the bottom of the Exxon
21 Valdez. It's taken at this position here, and
22 it's facing forward. Most of the photographs are
23 facing aft. This one is facing forward. And
24 it...
25 Q Does that fairly and accurately represent the

1 scene that you saw when you were at that
2 particular point?
3 A Yes, sir, it does.
4 (Pause)
5 Q Now, photographs 125 through 133 that we've
6 just discussed, are those photographs that were
7 taken by you?
8 A No, sir. They were taken in my presence, but
9 they weren't taken by me.
10 Q And they were taken in San Diego when you were
11 down visiting the Exxon Valdez at drydock?
12 A Yes, sir, they were.
13 Q Now, I'm showing you what has been marked for
14 identification as Plaintiff's Exhibit 134. Do
15 you recognize that?
16 A Yes, sir, I do.
17 Q What is that a photograph of?
18 A This is a photograph of the bottom of the
19 Exxon Valdez.
20 Q And where was that photograph taken?
21 A This photograph was taken right here at this
22 location, which is to the right of the center
23 line looking aft up into the bow area.
24 Q And was that photograph taken in San Diego
25 when you were there?

1 A Yes, sir, I was present.

2 Q And does that accurately depict what you
3 observed when you were in that position?

4 A Yes, sir.

5 Q Showing you what has been marked for
6 identification as plaintiff's Exhibit 135. Do
7 you recognize that photograph?

8 A Yes, sir. This is a photograph of the bottom
9 of the Exxon Valdez, and it was taken at this
10 location here. In this particular instance you
11 will notice that the arrow faces about the angle
12 shown by my pointer, it's not facing aft.

13 Q Was that photograph taken while you were in
14 San Diego?

15 A Yes, sir.

16 Q Does it accurately reflect the damage that you
17 observed when you were in that position?

18 A Yes, sir.

19 Q Now, showing you what has been marked for
20 identification as Plaintiff's Exhibit 136. Do
21 you recognize that photograph?

22 A Yes, sir. I recognize this as a photograph
23 that was taken in my presence when I was in San
24 Diego, and it was taken at this location facing
25 aft.

1 Q Does that accurately reflect what you observed
2 at that time?
3 A Yes, sir, it does.
4 Q While in San Diego?
5 A Yes, sir, it does.
6 Q Showing you what has been marked for
7 identification as Plaintiff's Exhibit 137. Do
8 you recognize that document?
9 A Yes, sir, I do. It was a photograph taken in
10 my presence of the bottom of the Exxon Valdez,
11 and it was taken at this location facing aft.
12 Q And is that an accurate representation of the
13 damage that you observed at that point?
14 A Yes, sir, it is.
15 Q Showing you what has been marked for
16 identification as Plaintiff's Exhibit 138. Do
17 you recognize that photograph?
18 A Yes, sir, I do. It's a photograph that was
19 taken in my presence of the bottom of the Exxon
20 Valdez. And it was taken at this location right
21 here, facing aft.
22 Q And does that accurately represent the damage
23 that you observed when you were in that position?
24 A Yes, sir, it does.
25 Q Showing you what has been marked for

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identification as Plaintiff's Exhibit 139, do you recognize that photograph?

A Yes, sir, I do. This is a photograph taken in my presence of the bottom of the Exxon Valdez. Again, this is a photograph not taken in the normal course. It was taken, looking from the right to the left instead of aft on the vessel.

Q Does that accurately reflect the damage that you observed when you were in San Diego that day?

A Yes, sir, it does.

Q Showing you what has been marked for identification as Plaintiff's Exhibit 140. Do you recognize that?

A Yes, sir. This is a photograph of the bottom of the Exxon Valdez, and it was taken in my presence at this location here. This one also looks from the right side to the left side of the vessel.

Q Does that accurately reflect the damage that you observed when you were in San Diego on that particular day?

A Yes, sir, it does.

Q From that point. Showing you what has been marked for identification as Plaintiff's Exhibit 141. Do you recognize that photograph?

1 A Yes, sir, I do. It was a photograph taken in
2 my presence of the bottom of the Exxon Valdez.
3 And it was taken in this location in the number
4 two starboard tank looking aft -- the camera was
5 looking aft.

6 Q And does that accurately reflect the damage
7 that you observed when you were in San Diego that
8 day?

9 A Yes, sir, it does.

10 Q Showing you what has been marked for
11 identification as Plaintiff's Exhibit 142. Do
12 you recognize that photograph?

13 A Yes, sir. This is a photograph taken in San
14 Diego of the bottom of the Exxon Valdez in my
15 presence, and was taken at this location, facing
16 aft.

17 Q Did that accurately reflect the damage that
18 you observed when you were in San Diego that day
19 and that particular place?

20 A Yes, sir, it does.

21 Q Showing you what has been marked for
22 identification as Plaintiff's Exhibit 143. Do
23 you recognize that photograph?

24 A Yes, sir, I do. It's a photograph taken in my
25 presence in San Diego of the bottom of the Exxon

1 Valdez. And it's taken at this location here,
2 the center of the number two starboard tank,
3 looking aft.

4 Q And does that accurately reflect the damage
5 that you observed when you were in San Diego that
6 day at drydock?

7 A Yes, sir, it does.

8 Q Showing you what has been marked for
9 identification as Plaintiff's Exhibit 144. Do
10 you recognize that photograph?

11 A Yes, sir. It's a photograph taken in my
12 presence of the bottom of the Exxon Valdez in San
13 Diego. And it's taken at this location here,
14 looking aft.

15 Q And does that accurately reflect the damage
16 that you observed when you were in San Diego that
17 day?

18 A Yes, sir, it does.

19 Q Showing you what has been marked for
20 identification as Plaintiff's Exhibit 145. Do
21 you recognize that document?

22 A Yes, sir, I do.

23 Q This is a photograph taken in my presence in
24 San Diego of the bottom of the Exxon Valdez. And
25 it's taken at this point here on the starboard

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side looking aft.

Q Does that accurately reflect the damage that you observed in that photograph?

A Yes, sir, it does.

Q Showing you what has been marked for identification as Plaintiff's Exhibit 144. Do you recognize that photograph?

A Yes, sir, I do. It's a photograph taken in my presence in San Diego of the bottom of the Exxon Valdez, and it's taken at this location right here looking aft.

Q And does that accurately reflect the damage that you observed when you were standing in that place while you were in San Diego?

A Yes, sir, it does.

Q Showing you what has been marked for identification as Plaintiff's Exhibit 147. Do you recognize that photograph?

A Yes, sir, I do. It's a photograph taken in my presence of the bottom of the Exxon Valdez in San Diego. Again, this is not following the norm. This is from the center of the vessel or very close to it, looking outboard, or looking away from the center line to the starboard side.

Q Does that accurately reflect the damage that

1 you observed when you were in that particular
2 place that day?

3 A Yes, sir, it does.

4 Q Showing you what has been marked for
5 identification as Plaintiff's Exhibit 148. Do
6 you recognize that?

7 A Yes, sir, I do. This is a photograph of the
8 Exxon Valdez taken in my presence in San Diego.
9 And it was taken right here at this location.
10 The locations which I'm referring to are on
11 Exhibit 103.

12 Q And does that exhibit accurately reflect the
13 damage that you observed in that particular area?

14 A Yes, sir, it does.

15 Q Showing you what has been marked for
16 identification as Plaintiff's Exhibit 149. Do
17 you recognize that?

18 A Yes, sir, I do. This is an accurate
19 photograph of the bottom of the Exxon Valdez,
20 taken in my presence while I was in San Diego.
21 And it was taken at this location right here,
22 facing aft.

23 Q Does that accurately reflect the view of the
24 vessel that you observed while you were in that
25 particular position when you were observing the

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Exxon Valdez in drydock?

A Yes, sir, it does.

Q Finally, showing you what has been marked for identification as Plaintiff's Exhibit 150. Do you recognize that photograph?

A Yes, sir, I do. This is a photograph of the Exxon Valdez, taken in my presence in San Diego, and that was taken in this location facing aft.

Q Captain Greiner, did you take that last batch of photographs?

A No, sir, I didn't.

Q Who did take those?

A Hugh Ackroyd, a photographer who accompanied me down to San Diego from Portland, Oregon.

Q Did he take them while in your presence?

A All of the photographs were taken in my presence with me standing within 20 feet of him.

MR. COLE: Your Honor, at this time I am going to move for the admission of what has been identified as Plaintiff's Exhibits 125 through -- I believe it's 150.

MR. CHALOS: No objection.

THE COURT: They're admitted.

EXHIBIT 125 THROUGH 150 ADMITTED

MR. COLE: Your Honor, at this time I would

1 like to request to be allowed to have Captain Greiner
2 step forward to this diagram and show the jury exactly
3 where those are, and point out some of the damage that
4 was done in the pictures.

5 THE COURT: All right.

6 (Side conversation)

7 Q (Captain Greiner by Mr. Cole:) Captain
8 Greiner, let's start with what has been
9 identified as Plaintiff's Exhibit 125. Would you
10 show where that photograph was taken, and then
11 briefly describe to the jury what they are
12 looking at?

13 A This photograph was taken right here, just a
14 little to the left of the center line, looking
15 aft. You are seeing the initial markings where
16 the vessel first came in contact with the bottom.
17 The blocks that are underneath here are bilge
18 blocks. I'll mention them in...

19 Q You need to hold that up a little so they
20 could see.

21 A I'm sorry. The bilge blocks are these blocks
22 right here, and they are approximately four foot
23 high. This is what the vessel rests on. In
24 other words, they are put in there before the
25 vessel comes into the drydock and the vessel is -

1 - when the water is pumped out the vessel comes
2 down and sits on them. They are, I believe,
3 concrete blocks with a wood top on it. In other
4 words, a crushing piece. And you will see them
5 throughout all the photographs.

6 Q Now, can I ask you to identify that position
7 on this, also?

8 A It's right here. Let me hold the picture up.
9 It's in this location here looking aft.

10 Q Now, showing you what has been admitted as
11 Plaintiff's Exhibit 125. Show the jury what that
12 is a picture of and where that was taken?

13 A This photo...

14 Q Incidentally, before you do that, would you
15 show the jury how you are identifying where these
16 photographs were taken?

17 A The photograph on the back of it has two tags.
18 This is the court's tag. This one is the
19 photographer's tag. And at the bottom he has a
20 series of numbers. I assume that the first five
21 digits or numbers are his case number. And we
22 are only interested in the last grouping. And in
23 this particular photograph it's "R", which stands
24 for roll 9-7, which is the negative. The "A"
25 after it is because on 35 millimeter film they'll

1 have a number seven. And a little over to the
2 right they'll have a 7-A in case the roll is
3 loaded just a little out of the normal frame. So
4 the last letter can be disregarded, in this case,
5 negative 7, and it's taken right here.

6 Q So that would be roll 9, negative 7?

7 A Yes, sir. You could always match them up by
8 looking at this number with the number that's on
9 here.

10 Q That's upside down, I believe, right?

11 A Yes, sir.

12 Q Would you tell the jury now what that is a
13 photograph of?

14 A This is the center line of the vessel, as you
15 can see. And this is another area of initial
16 contact. Here is a ladder here. The plate has
17 been ruptured and there's a ladder there so that
18 the workmen could go in, and there is some hoses
19 there. It's a wide angle lens, so there's a
20 little distortion. You could see it at the
21 edges.

22 Q Would you point out other areas that the jury
23 will see photographs of later so that they could
24 understand where they are in other photographs?

25 A Right here is an area where you will see a

1 large rock about the size of a Volkswagen
2 imbedded in the bottom of the vessel. On this
3 photograph, which was taken later than the
4 photographs of the rock you'll see, there is a
5 sign. That sign is not present in the other
6 ones. We're talking about a matter of hours.
7 But this sign right here is a cautionary sign for
8 no one to walk under it because they are afraid
9 it might fall out.

10 Q Would you point out in that photograph where
11 the forepeak is?

12 A The forepeak -- this is the forepeak area
13 right here (indicating).

14 Q I'm showing you Exhibit 128. Will you show
15 the jury what that is a picture of?

16 A Okay. I'm looking at the back of it. It's
17 photograph 7-27. And it is taken just a little
18 to the right of the center line back here. And
19 on this Exhibit -- on 103, the pink lines
20 represent the separations between the tanks so
21 that -- you know, this is number one tank center;
22 this is number two tank center; three, four,
23 five. So this represents the damage in this area
24 right here. You are looking at the damage -- as
25 you look at the photograph, I believe this is the

1 bulkhead between the two tanks right here. That
2 would be the bulkhead right here between the
3 number one and the number two tank.

4 Normally there would be plating here. You
5 wouldn't see any of this. But the plating is
6 missing from the area. What you are looking at
7 is, you are looking at the structural members,
8 which I mentioned before, are these members here
9 that are in the vessel that hold the plating in
10 place. These are the bilge blocks here. And the
11 light here is because the shipyard had put lights
12 underneath it. That's nothing of -- it just
13 provided light.

14 Q Now why isn't there the bottom cover -- the
15 plates that go underneath the vessel in that
16 area?

17 A Well, the plates are missing. Whether the
18 plates were torn out in the initial contact, or
19 whether the plates were torn out at a later date,
20 I can't tell. We know that there was a lot of
21 damage done in the initial contact, but there is
22 no way that I have to identify which plates were
23 there after the initial contact while later cut
24 off, or which plates were missing after the
25 initial contact.

1 Q And finally, would you just show the jury, on
2 using this model, where this photograph was
3 taken?

4 A Okay. This photograph -- on the model, it's
5 difficult to see, but the person who made the
6 model made the bulkheads between the tanks a
7 little thicker than the pieces that represent the
8 structural members. So here is the bulkhead
9 between the two tanks. The photograph is taken
10 underneath -- on the bottom, right in here,
11 facing aft. In other words it's taken right here
12 looking aft.

13 Q Would you show the judge that real quick?
14 Number 127.

15 A Number 127 is photograph 9-1. And it's taken
16 here under the number one center tank, and it
17 represents -- these are score marks here that we
18 talked about before, and, of course, here your
19 plating has been ripped out. Again, the bilge
20 blocks are right here.

21 Q Number 129.

22 A 129 is photograph 7-9 taken in this location
23 under number three center tank. This is number
24 three center tank. And this was taken -- the
25 person in it is me. It gives you an idea of the

1 size -- the magnitude that we're talking about
2 here. The reason I was in it is I was shooting a
3 flash gun off at that point so we could have a
4 better photograph.

5 Q Now, what is this in this area right in here?

6 A This is a crushing effect and not a tearing
7 effect. In other words, in this area, as we'll
8 discuss later, there is a 12-foot rise and fall
9 of the tide. So when the vessel is on the bottom
10 at high tide and the tide goes out, it's going to
11 try and go down. But the rock is there and you
12 are going to get crushing damage underneath
13 there.

14 Q Now, 130.

15 A 130 is photograph 8-23, which is taken
16 underneath the number four center tank in this
17 area here. You can see the scoring marks. You
18 can see on the photograph itself the marks that
19 the rock left as the vessel passed over it. In
20 other words, this is a very good indication of
21 the vessel's movement here.

22 Q Of the vessel going over something?

23 A Yes, the vessel going over the rock. It
24 indicates the direction that the vessel was going
25 at that time. The person in it is the attorney

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for Exxon.

THE COURT: Mr. Cole, I think we'll stop on 130.

MR. COLE: Sure.

THE COURT: That completes the trial day. We will resume again at 8:15 a.m. on Monday. This is Friday. This will give you two days of weekend. Don't discuss this case among yourselves or with any other person, and do not form or express any opinions concerning the case. Avoid the media information about this case or media information about the oil spill in any regard, involving any of the people involved or the companies involved.

I told you enough times, I don't need to go into any detail, but I just want to emphasize the importance. So have a safe weekend and we'll see you back at 8:15 a.m. on Monday.

(Jury not present)

Is there anything I can do for counsel before recess for the weekend?

MR. COLE: I'll provide you the stuff that we mentioned up there, Judge, as far as the information of what we sent Captain Greiner and any reports that he's done for this will be turned over today.

MR. CHALOS: Judge, I notice that Mr. Greiner

1 has a blue book in front of him that he keeps referring
2 to. I think it would speed up my cross examination if
3 I were allowed to review it either tomorrow or Sunday.
4 This way I could eliminate a lot of the questions
5 relating to the document in front of him.

6 THE COURT: Are you using that book in any way
7 to assist you in your...

8 A The book contains a number of the exhibits
9 that are present in the court and it also
10 contains a spreadsheet that I worked out myself
11 in doing the reconstruction, and a few other
12 things that are not exhibits in the court.

13 THE COURT: Any problem with that?

14 MR. COLE: I don't have any problem with it.

15 THE COURT: Okay. You want to have some of
16 them before your cross examination. You expect to
17 finish up for a couple of hours on Monday?

18 MR. COLE: Yes.

19 THE COURT: Well, sometime between now and
20 your cross examination, Captain Greiner, would you let
21 Mr. Chalos look, in your presence.

22 A Certainly.

23 THE COURT: You don't have to turn it over to
24 him. You can do it in your presence.

25 Anything else?

1 MS. HENRY: Your Honor, I do have one other
2 matter. Plaintiff's Exhibits 120 and 121, which are
3 the two tapes that were brought in by the Coast Guard
4 personnel this morning. I didn't have it until he
5 brought them in this morning myself. And the defense
6 has requested copies of those. They already have a
7 copy of the complete tape, but they would like to have
8 a copy of those portions that I had specifically
9 requested.

10 So I would request permission to take those
11 tapes from the courtroom. They have not been
12 admitted. I have not moved to admit them yet, so
13 I could make copies for us and for the defense.

14 THE COURT: Any problem allowing that to be
15 done.

16 (No audible response.)

17
18 THE COURT: Okay. Then you can do that.

19 MR. COLE: There is one exhibit, Your Honor,
20 that I would like to withdraw. And that's been
21 identified as Plaintiff's Exhibit 28. It's merely a
22 replica -- a copy of what has already been admitted,
23 103, and it's not going to be used. If the defense
24 counsel wants it. I just wanted to get it out of here.

25 MR. CHALOS: I think that this is the original

1 document that was prepared by Mr. Lites. I believe Mr.
2 Lites will be called as a witness either by prosecution
3 or by...

4 THE COURT: Let's leave it here then.

5 MR. COLE: That's fine. I have no problem
6 with it. Let me explain to you what the numbers are.
7 These are all the photographs. But the only ones that
8 are included that we had blown up are the ones with an
9 underline.

10 MR. CHALOS: Well, then I have no objection,
11 Your Honor. It appears to be a modified version of
12 103.

13 THE COURT: Do you have any objection to Mr.
14 Cole withdrawing that from the court or withdrawing it
15 from...

16 MR. CHALOS: No, I don't.

17 THE COURT: Okay. Then you may do so. And
18 will counsel approach the bench for a minute, please.

19 MR. MADSON: Do you want all of us or just
20 one.

21 THE COURT: I think all of you should come up.
22 Ms. Henry?

23 (1162)

24 (Whispered bench conference as follows:)

25 THE COURT: I don't know how that article in

1 the paper came about about the speech, if you've all
2 seen that in this morning's paper. But it's not in
3 evidence. And I don't know if counsel -- did one of
4 you release that information to the press?

5 MR. CHALOS: No, sir.

6 UNIDENTIFIED SPEAKER: (Indiscernible -
7 whispering).

8 THE COURT: Okay. Nobody here released that
9 information...

10 MR. MADSON: (Indiscernible - whispering).

11 THE COURT: I just wanted to make sure. Okay.
12 I didn't think that either one of you had, but I wanted
13 to make sure.

14 (End of whispered bench conference)

15 (1192)

16 THE COURT: Okay. Is there anything else we
17 can do before we recess for the weekend?

18 MR. COLE: No.

19 MR. CHALOS: No.

20 THE COURT: Have a nice weekend. We'll see
21 you Monday.

22 THE CLERK: Please rise. This court stands in
23 recess subject to call.

24 (Off record - 1:34 p.m.)

25 ***CONTINUED***